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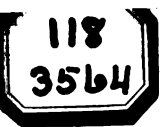
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* ARGUMENT FOR CLAIMANTS

16
IN THE CASE OF THE

U. S. and Paraguay Navigation Co.

VS.

THE REPUBLIC OF PARAGUAY,

SUBMITTED TO

Commissioners Hon. Cave Johnston, for the U. S., and Senor Jose Berges, for Paraguay,

BY

JOHN APPLETON AND C. S. BRADLEY,

COUNSEL FOR CLAIMANTS.

WASHINGTON :

M'GILL & WITHEROW, PRINTERS

1860.

10/25/16

Oct. 23, 1916

ARGUMENT.

This is a case of wrong and injury done by the government of Paraguay to citizens of the United States. It is only in cases of wrong that this government will interpose. In other cases its good offices are sometimes employed, but it never makes a demand, or employs force, unless a wrong has been done. This is its settled policy.

In this case, the wrong is beyond question. It appears from the memorials of the company, from the recorded judgments of the Department of State under two administrations, from the messages of the President, from the solemn action of both branches of Congress, and from the treaty itself, which assumes the wrong, and constitutes a commission to assess the damages.

It is a peculiarity of this commission that it is formed with reference to a single case and for a single purpose. Ordinarily, a claims commission is authorized to consider and determine all such claims of a certain character as may have been presented within a given time. In such cases, the treaty assumes only certain general facts, such as the previous existence of a war, the appropriation of a sum of money, or some general principle of liability. Neither of these assumptions would be inquired into by a commission. In this case, the whole subject matter of the negotiation which led to the treaty, having been a single claim, it was easy to make the convention definite, and to confine the duties of the commission to a single point. This has been done. The treaty assumes the wrong committed and the liability of Paraguay, and only authorizes the commissioners to assess the amount of damages. It is a simple question of, how much?

If there was any ambiguity in the convention on this point, it could not fail to be removed by a reference to the proceedings which led to the convention.

The first application of the company to their government was dated January 15, 1855, and requested that "such measures may be taken as to me [the President] may seem meet and proper,

to demand of the government of Paraguay and enforce the payment, as indemnity for our losses and the destruction of our business in that country, the sum of \$935,000."

The statement of Mr. Gallup (see his letter to Mr. Bradley, of July 8, 1855) shows that Mr. Marcy, the Secretary of State, "although at first some what prejudiced against it, [the claim,] at the last interview I had with him, expressed himself satisfied that a great outrage had been committed upon our citizens by the President of the Republic of Paraguay, and that he should make a demand upon his government for indemnity."

The records of the department show that this assurance was complied with. On the 18th of July, 1856, Mr. Marcy writes to Mr. Peden, American Minister at Buenos Ayres, as follows :

"A company of American citizens, called the 'United States and Paraguay Navigation Company,' was established in the manufacturing business within the territory of Paraguay, with the full consent of the government of that country. A misunderstanding unfortunately arose between that government and the U. S. consul, Mr. Hopkins, who was the agent of the company. The authorities of Paraguay not only broke up the company, but seized its property. The conduct of Paraguay appears to have been not only unjust and oppressive, but to have produced the loss of a large amount of property. Mr. Fitzpatrick will be instructed to present to the Paraguayan Government a claim for the damages sustained by its unjustifiable proceedings towards the company. Should there be, as there probably will, a difference of opinion as to the character and amount of indemnity to which the company is entitled, [not as to the *liability*, be it observed, but as to the *indemnity*,] Mr. Fitzpatrick will be instructed to investigate the transaction and report thereon to the government."

Accordingly, on the 5th of August, 1856, Mr. Marcy writes to Mr. Fitzpatrick as follows :

"No doubt is entertained that injustice was done to the company, and that under the condition of things in Paraguay, the government of that country is accountable therefor. You will accordingly, at a proper time, and in a proper manner, make known the views of this government on the subject. Before advertng to it, however, it is deemed advisable that you should propose an exchange of the ratifications of the treaty with Paraguay, which was concluded on the 4th of March, 1853."

Whatever prejudices Governor Marcy may have had in the beginning against Mr. Hopkins or the claim of the company, he had reached the conclusion, it will be seen, at this time, that, beyond any doubt, "injustice was done to the company, and that, under the condition of things in Paraguay, the government of that country is accountable therefor." This was the deliberate judgment of Governor Marcy, and was made the basis of his official action.

It was a judgment found, moreover, not upon *ex parte* statements of the company, but in full view of the statements, also, of Paraguay, and with the correspondence of Mr. Falcon on the files of the Department.

The mission of Mr. Fitzpatrick was a complete failure. He was so rudely treated on the subject of the treaty, and his request was so summarily refused, that he seems to have thought it useless to attempt any other business. The claim of the company was not mentioned, and when he was satisfied that President Lopez would not consent to exchange the ratifications of the treaty, he at once withdrew.

It now became necessary for the Government of the United States to resort to more decisive measures in respect to Paraguay. Without any good reason on earth, the business of the company had been broken up, its property seized, and its servants insulted; a peaceful surveying vessel had been fired upon, and an American citizen had been killed; a treaty solemnly made had been refused to be exchanged upon the most frivolous pretext, and our agents, who were sent out in a spirit of moderation to adjust the existing difficulties, had been received with rudeness, and refused any satisfaction whatever. It was quite time that President Lopez should be made to feel his true position.

Accordingly, after a careful examination of the subject, the President brought it to the attention of Congress. In his message of December 8th 1857, after referring to the treaty and to the Water Witch, he adds:

"Citizens of the United States, also, who were established in business in Paraguay, have had their property seized and taken from them, and have otherwise been treated by the authorities in an insulting and arbitrary manner, which requires redress."

This was the judgment of the President of the United States, as deliberately published to the world in his annual message. And so important did he deem the subject that he made the following recommendation:

"A demand for these purposes will be made in a firm but conciliatory spirit. This will the more probably be granted, if the Executive shall have authority to use other means in the event of a refusal. This is accordingly recommended."

The recommendation of the President was responded to by the Committees on Foreign Affairs, both in the Senate and House. The reports of both committees are before the commissioners, and set forth, in the most clear and emphatic manner, the wrong done by Paraguay to the company, and the justice of their claim to redress.

On the 2d of June, 1858, Congress adopted a resolution authorizing the President to adopt such measures and use such force to secure justice from Paraguay as he might think necessary.

A large expedition was at once formed by the Secretary of the Navy, and placed under the command of Commodore Shu-

brick. Willing, however, to avoid, if possible, the use of force, a commissioner was appointed, (Mr. Bowlin,) who accompanied the expedition, bearing definite proposals of adjustment to be laid before Paraguay. These proposals, of course, were the terms dictated by this Government, upon which alone hostilities could be avoided. They are contained in the instructions of General Cass to Mr. Bowlin, and speak for themselves. In reference to the claim of the company, they relate wholly to the question of amount. As to any question of wrong or injury, Mr. Bowlin was entrusted with no discretion whatever. That question was regarded as foreclosed. Concerning this part of the subject, his instructions left him no possible room for doubt. The injuries done to the company were detailed to him at length, and he was distinctly told that the loss of the company "was occasioned by the wanton violence of the Paraguayan Government," and that there was "no doubt that the Paraguayan Government ought to be held to make it good to the injured party." "If, therefore, (it was added,) the Government of Paraguay should consent to the payment of the sum of \$500,000, in full discharge of the entire claim of the company, you will not refuse to make the adjustment for that amount."

This was the first discretion entrusted to Mr. Bowlin in reference to the claim of the company. He might adjust it for \$500,000. This failing, he had one alternative. Such was the confidence of the company in their case, that they preferred to present it to a joint commission rather than adjust it for a less sum than \$500,000, which they regarded as a liberal compromise of their just claims.

"If you find it impossible," adds, therefore, General Cass, "to reach an agreement with the Paraguayan Government as to the amount of indemnity to be made to the company, [not as to the wrong and injury done—that was concluded,] you may propose to leave this to be determined by an impartial commission." "An indispensable preliminary, however," he was carefully admonished, "to this adjustment, will, of course, be an acknowledgment on the part of the Paraguayan Government, of its liability to the company."

This was his second mode of adjustment. If Paraguay would pay \$500,000 dollars, he might adjust the claim for that sum. If not, he might refer the question of amount to be settled by commissioners under specified treaty provisions, provided, however, that the Paraguayan Government must first acknowledge its liability to the company. Unless this was acknowledged, he had no authority to make the treaty, but must refer the subject to the commander of the American squadron, who could then have employed force.

It will not answer to say that the naval expedition had special reference to the Water-Witch and the treaty, for this idea is directly contradicted by the instructions. "You will state," writes General Cass, "that the President desires friendship with Paraguay, and trusts that this desire may be reciprocated. In the cases of the Water-Witch and Paraguay Navigation Company, however, he can accept no other proof of such a desire on the part of that Government than the acceptance by it of the basis of settlement of these cases which has been indicated."

Thus, in order to avoid the use of force against her, Paraguay was either to pay \$500,000 to the company, or else to acknowledge its liability, and consent to refer the question of amount to a joint commission. This was the whole of Mr. Bowlin's discretion in reference to the company.

To say that he made the treaty without this acknowledgment of liability, would be to charge him with a direct violation of his instructions, of which I am quite sure he could never be guilty.

To say also that the President of the United States thus limited Mr. Bowlin's discretion, in a case involving peace or war, without having fully satisfied himself that the wrong had been done and the liability incurred, would be to charge that distinguished functionary with a dereliction of duty which no man living is less likely to commit.

But, in point of fact, Mr. Bowlin is not chargeable with any such violation of his instructions. In his dispatch accompanying the treaty, he declares that he has literally obeyed them, except in reference to a suggestion which was made to him as to the place where the award should be paid. This he deemed unessential. His obedience is shown, moreover, by the treaty itself. We come, now, to the treaty.

The preamble recites "a pending question" to be settled. The only pending question was the question of amount. The liability had been conceded, but there was a failure to agree upon the amount. President Lopez was willing to pay \$250,000, but Mr. Bowlin was not authorized to receive less than twice that sum. There was "a pending question," therefore, of amount, and this was to be determined by commissioners.

The first article binds Paraguay, in substance, to pay the award of the commissioner.

The second article is specific as to the whole object of the constitution. "The two high contracting parties [it says] appreciating the difficulty of agreeing upon the amount of the reclamations," &c. The difficulty is not as to agreeing upon the question of wrong or injury or liability, but only upon the amount; and "to determine the amount of reclamations, [not the wrong,] it is therefore agreed," continues the article, "to constitute such a

commission." By the terms of the same article the two commissioners are to meet in Washington to "investigate, adjust, and determine the amount of the claims," &c., and in the fifth article the mode of payment of such "amount" is specifically indicated.

The letter of the treaty, therefore, is in strict conformity with the purpose of it, in strict conformity with the instructions under which it was made, in strict conformity with the views of Congress who authorized the expedition, in strict conformity with the views of the President, and in strict conformity with the whole history and justice of the case. Nothing was intended to be embraced in the treaty but the question of amount; and human testimony, it is respectfully submitted, cannot possibly make anything more clear than that no other question *was* embraced in the treaty.

Nor was there anything novel, under the practice of our Government, in thus requiring an admission of liability as an indispensable condition of delay. Such cases have been of frequent occurrence. In the recent instance of the "Aves claim," where Venezuela was charged with having evicted a party of American citizens from a guano island, our minister at Caraccas was finally instructed to demand his passports, unless Venezuela would admit its wrong and acknowledge its liability. In that event he was authorized to remain, and leave the computation of damages for subsequent arrangement. To avoid the acknowledgment, Venezuela sent a special minister to this country, with an earnest request that the negotiation should be transferred to Washington, where the damages, it was alleged, might be more equitably assessed, for several reasons, which were given, than could possibly be done in Caraccas. But our Government would only consent to the transfer upon the condition of an admission of liability, and the special minister returned home. The Government of Venezuela, having then exhausted all its efforts to avoid doing so, at last made the required admission, and our minister remained at his post. Some time afterwards the claim was adjusted to the satisfaction of the parties. This is only a recent case to illustrate a common practice. And the reason for the practice is quite obvious. Whenever a wrong has been done to a citizen, there is an injury done also to the national honor. The question of damages may require time, and can wait; but when the facts are once known, a nation jealous of its honor will demand the most prompt atonement. The acknowledgment of wrong and the promise of indemnity are, in the beginning, of course, a sufficient satisfaction. It will only remain then to compute the loss and see that the promise is complied with. In the present case, the commissioners are to ascertain the loss, and Paraguay has agreed to make it good.

But even if this were all otherwise, and the whole question of wrong still remained to be determined, there is abundant evidence in the case to satisfy the most reluctant mind. The same facts which convinced Governor Marcy, which convinced General Cass, which convinced President Buchanan, which convinced both branches of Congress, and which led to the extreme measure of an armed expedition, it may fairly be taken for granted would convince also this honorable commission. It is difficult, indeed, to find, in all the crowded catalogue of our Spanish-American claims, a single instance where, considering the magnitude of the enterprise, the assurances under which it started, the favor which met it in the beginning, the great success it had begun to realize, and the means by which it was finally destroyed, there has been a greater outrage inflicted upon the rights and interests of American citizens, than was inflicted by the Government of Paraguay upon the rights and interests of this company. The conduct by which President Lopez advanced to his purpose, after he had once resolved upon it, we hesitate, before this honorable commission, to characterize as it deserves. We content ourselves with remarking that the injury committed was none the less certain and disastrous because it was not accomplished by one bold act of violence, but was gradually reached by a series of contrived and cunning measures which led inevitably to the same result. It was a system which, beginning with popular insults and annoyances, for which there was no redress, and proceeding through arbitrary decrees, which, though general in their language, were yet specific in their application, culminated at last in the use of military force, and the threat of personal imprisonment.

In order to understand clearly the character and effect of these measures, it is essential to keep in view the peculiar relation which President Lopez bears to the Paraguayan people. He is not only the chief magistrate of the country, but he is practically, also, its unquestioned dictator. "The judiciary, elections, and Congresses," says Lieut. Page, "are alike controlled by the President, who governs with an authority as unquestioned as if he were supreme dictator." Nor is his authority confined to the leading departments of the Government or to the principal transactions of the State. It penetrates everywhere, and is exercised on all classes and every subject. The people were educated to the most timid obedience under Dr. Francia, and this obedience continues to its full extent under his successor. An unquestioning and timorous submission to his decrees, a reverential awe and demeanor in his presence, are observed by all," Lieutenant Page continues, "however high their official or social position." "It would seem, indeed," says Sir Wm. Parrish, "that the Paraguay-

ans have been so habituated to a despotism, that they have no ideas or wishes beyond it." (Buenos Ayres, from the Conquest, p. 287.) The natural associate of a despotic system, in Paraguay as well as elsewhere, is a complete system of "*espionage*;" and while nothing is done in that country against the will of the dictator, such is the vigilance of his agents that nothing is done without his knowledge. The extent to which he interferes, even in the social and personal affairs of his people, is almost beyond belief; and the idea that any series of public insults or annoyances could be practiced against foreigners in Paraguay without his knowledge and consent, is wholly inadmissible.

Added to this, General Lopez (or the Government, which is the same thing) is understood to be the chief merchant and banker of the country. The commercial, as well as the political, the judicial, and the social, affairs of Paraguay are all controlled in a great degree by him. Through monopolies and agents and family connections he wields a large part of the whole property of Paraguay. A doubt was entertained on this subject in the proceedings before the commission, but the statement, we think, cannot be successfully controverted. It is confirmed by all the witnesses who have appeared in this case, and by every traveler, it is believed, who has written concerning Paraguay.

With this overshadowing and all-pervading authority of President Lopez, it is not strange that, when he received favorably the employees of the company, on their first arrival in Asuncion, they were also received favorably by his people. The general agent of the company (Mr. Edward A. Hopkins) had done business in Paraguay for some eight years previous to this arrival, and his relations with President Lopez had always been of the most friendly character. It was through his influence, in some measure, that the expedition had been formed; and besides the assurances contained in the public decree of 1845, he felt that he had a right to rely, in behalf of the company, upon the friendly feelings of the Paraguayan Government. In this he does not, at first, seem to have been in error. Both he and his associates were received with cordiality; courtesies were freely exchanged with President Lopez; a carriage was presented to him and suitably acknowledged to the "general agent" of the company; lands were purchased without difficulty and with his concurrence; the use of the old barracks was granted to the company for two years; the requisite *peones* were supplied upon easy terms, the natives were courteous and respectful, and the company proceeded to establish itself under the most favorable auspices. In a brief period it had its cigar factory at work in Assumption, and its saw-mill in operation at San Antonio. It had obtained a desirable site on the river, and was proceeding to employ its

other machinery. Its anticipations had been more than realized, and with the arrival of the second expedition, which was soon expected, a new development of its enterprise and further profits were confidently looked for. President Lopez seems to have been somewhat startled by these results. He saw a new era opening on his country. He was willing to introduce improvements, but he desired to have their control and benefits for himself. He was willing that some of his subjects should be taught a useful trade; but what if they should acquire at the same time some American notions of liberty and right? Where was this thing to stop? Here was a great company, with large means and intelligent managers, planted in the midst of a rich country of undeveloped resources, gradually expanding itself to meet the wants of its position, and destined, if it continued to flourish, to exert a powerful influence in the affairs of all that region. The introduction of a few useful machines or a few individual traders was all very well; but at the possible future of a great commercial company he evidently took alarm. Besides, the improvements being introduced, and some of his people instructed, he saw no reason why he should not employ the improvements and derive the profits himself. These are the motives under which, according to the general opinion on the La Plata, as stated and concurred in by Lieut. Page, and according, also, to all the probabilities of the case, President Lopez and the French minister changed his policy towards the company. In point of fact, according to the testimony of Lieut. Page and others, "on the breaking up of the American company, one of President Lopez's sons immediately went into the cigar business with these same operatives." Mr. Morales testifies, moreover, that on a previous occasion he had been offered inducements to leave the company and work for President Lopez.

The company was now to be broken up, and the change in President Lopez towards the Americans was at once manifested by the change in the conduct of his people. Their previous civility was now exchanged for rudeness, and where they were before respectful, they were now insolent. All the witnesses testify to the nature of these annoyances. Mr. Hines, however, sufficiently describes them.

"Gradually," he says, "their kind treatment was changed, first from neglect to annoyance, and from annoyance to insults, till it became almost impossible to live in Paraguay at all. Spies were about us to catch every word we might utter, and to watch us about our daily avocations, to repeat to their superiors every word, every act, no matter how trivial. Insults of various kinds were offered the American residents. My wife, a native of the United States, was some months resident with me in Paraguay.

Her health was very delicate, and the annoyances and insults she was obliged to suffer had a serious effect upon her health. People have tried to pull her from her horse by catching at her habit when riding rapidly. Our house was beset with a crowd of native rabble, who would throw into our windows sand, stones, bones, oranges, or anything that was within their reach. Upon trying to find the offenders, all would profess innocence."

The same annoyances, according to the testimony, were practiced towards all the Americans, even including the officers of the Water-Witch, and the counting-room of the company was a special object of attack. The assault by a soldier upon Mr. Clement Hopkins, when he was riding with Madame Guillement, is a part of the same history, and shows the general *animus* which at that period existed in the country towards all Americans. That this *animus* and those annoyances were really the work of the Government, there can hardly be a reasonable doubt. No native of Paraguay would have dared thus to act against its will, and it is equally certain that no native of Paraguay could thus have acted without the knowledge of President Lopez. It is true that, on one occasion, a guard of soldiers was placed at the house of Mr. Hines, but the annoyances were more frequent while the guard was on duty; and this fact of itself indicates the complicity of the Government.

The first step, then, which was taken by President Lopez, in order to drive out the Americans, was to excite his people against them, and thus expose them to insult and annoyance. The force of this step can easily be estimated by any one who has resided for any length of time in a distant and half-civilized country. It is no pleasant thing when a man is thousands of miles from his own Government, and with the authorities of his residence indisposed to protection, to find himself living in the midst of a hostile population. This step was well calculated to have effect.

But resort was now had to more decisive measures. The first of these sought to deprive the company of a large part of its estate in San Antonio. This had been bought of Mrs. Bedoya, a widow, some five months before, with the full concurrence of President Lopez and the guardian of minors, and had since been improved for the purposes of the company. A copy of the deed of this land will be found among the papers in the case. It was purchased when the company was in favor with President Lopez; and every facility was rendered in the completion of the sale. Among other things the company was relieved by the government from any formal mensuration of the land. There were old barracks, also, on the premises, and President Lopez gave the free use of these to the company for two years. But now his whole policy was changed. Mr. Hopkins had lost his favor, and the

company was to be driven out. By decree of August 16, the title to the land was declared void. Mr. Hopkins was charged with fraud in obtaining, and Mrs. Bedoya was ordered to refund the purchase money. The pretext for all this was that the guardian of minors had not consented to the sale, and that the land had not been measured. The deed itself, however, shows that the guardian *had* consented, and the evidence is conclusive that the mensuration had been waived by President Lopez himself. Such a decree, under such circumstances, in reference to land bought originally under the auspices and with the approval of the government, occupied for five months without a word of objection, and improved by the company at great cost, scarcely requires a word of comment. It is another step of the Paraguayan Government towards the destruction of the company. Of course, Mr. Hopkins refused to receive back the purchase money, to which there was no provision in the decree for adding any compensation for improvements, and insisted, as he had a right to do, upon the perfect honesty and legality of his title. The next demonstration was on the barracks. The use of these had been granted to the company by President Lopez himself, for two years from November, 1853. Mr. Hopkins was now notified by a colonel of infantry, that he had orders from the President to take possession of them; and against all protest, this possession, it will be seen from the testimony, was speedily accomplished.

On the 23d of August, President Lopez issued another decree, which was doubtless intended, and was certainly well calculated, to effect without any delay or uncertainty his whole purpose of destroying the company. The decree, in its terms, applies generally to all industrial establishments; but as the company was the only establishment of the kind in Paraguay, its reference to the company was, of course, just as specific and direct as if it had been mentioned by name. The whole decree is directed against the Americans. Some of them, from the injuries they had received, had felt it necessary to arm themselves. This is positively prohibited under forfeiture of the arms and punishment of the offender. All meetings of foreigners, except for courtesy and diversion, are also forbidden either by day or night. Of course there could be no meeting for purposes of business. The sale of land to foreigners is forbidden, and whenever land is to be sold, the State has the just right to purchase. Sales of land already made without attention to rights are declared void and of no effect; and a special requisition is made upon previous purchasers of land, who have not had a judicial survey, to apply to the government for this purpose and within six days to file their deeds. Every unlicensed factory is to be shut up within

three days, unless within that time the license is applied for. The use of any foreign commercial title is prohibited without the formal knowledge of the government. It is unnecessary to cite the whole of these provisions, for the decree itself is before the commissioners. Its object is as unmistakable as its effect.

An establishment that had been going on for months under the very eye of the Government, not only without objection, but with its manifest approval, is now weighed down with conditions which are manifestly inconsistent with its existence. No land, no factory, no title, no general agent, no business meetings—what could be done with the establishment of the company after these prohibitions? Mr. Hopkins tried to avoid the blow; but when he applied for the license, his application was returned because he had signed it as “General Agent.” Yet in his earlier intercourse with President Lopez this title had been constantly used on both sides without objection. The President used it in his letter acknowledging the present of a carriage, and in all the deeds produced here, it will be seen, the same designation was employed. Yet after the lapse of many months a solemn decree demanded its formal communication. Mr. Hopkins complied with the decree, but his formal notice was repelled as an intended insult. Meanwhile, a new decree of the 29th of August practically deprived the Americans of all their servants, and, as several of the witnesses testified, they hardly knew how they were to live. It was dangerous for the natives to be on good terms with them. They were unwilling to rent them their dwellings, or furnish them with supplies. They were annoyed in their houses and stoned in the streets. Mr. Hopkins could only protest with earnestness, and refer the case to his own Government. For doing this his *exequatur* was withdrawn. It is due to him to say that in the official paper announcing this withdrawal, no good reason is given for it on the face of the earth. We are not called upon to justify all the consular acts of this officer. It is possible that he had an exaggerated idea of his consular position, and of his official duty to protect the rights and interests of his countrymen. But we have looked in vain through the correspondence in this case for any evidence against him of serious indiscretion. He is evidently a man of ardent temperament, and from some of his dispatches he appears to have been impatient at what he regarded as a want of sympathy on the part of Captain Page. It is only just to remember, however, that if their judgments differed in the beginning concerning President Lopez and his treatment of this company, they were quite harmonious in the end, and Captain Page has placed on record his opinion upon these subjects in language quite as strong as any which has ever been used by Mr. Hopkins. The course of this Govern-

ment (he writes officially to the Secretary of the Navy, under date of September 26th, 1854) "towards this company, in my humble opinion, requires some action on the part of our Government, not only in the way of reclamation, but, should there come to reside in this country American citizens, their protection from oppression and maltreatment would not be secured to them unless by the presence of a man of war." * * "How long the good relations between this Government and myself may continue, it is impossible to say, and will depend upon its own course. There is a want of dignity and integrity which will suspend friendly relations by a precarious tenure."

Captain Page therefore concurred at last with Mr. Hopkins, both in respect to the government of Paraguay, and in respect to its treatment of the company. Nothing, however, could avert the threatened destruction. The work was finally accomplished by the use of military force. On the 28th of August the cigar factory was closed, under orders from the government, and more than a hundred laborers expelled therefrom, to whom the company had paid some eight hundred dollars of advanced wages. This is the testimony of Morales, which is confirmed by other witnesses, and by the official papers of Paraguay itself. On the 5th of September, the saw-mill belonging to the company was also stopped, the peones were discharged, and all the property at San Antonio was seized by the government. The directions, for these purposes, were given to Mr. Vasquez, and his official report is among the papers in the case.

The work was now done. Neither factory, nor land, nor house, nor machinery, nor laborers, nor servants, nor associates, nor commercial character, nor official representation with an arbitrary government and a hostile population; no wonder that the Americans felt seriously anxious at their hazardous situation. Yet, strange as it appears, they seem to have found it difficult to get away. Under the rule of Dr. Francia, the system of detaining foreigners in Paraguay was practised to a very liberal extent. Messrs. Rengger and Longchamp, two Swiss gentlemen, who afterwards published an account of their detention, were thus detained for several years, and Mr. Bonpland, the well-known companion of Baron Humboldt, was only set at liberty after he had been a prisoner for nine years. In the midst of the difficulties which surrounded them, and especially those of procuring a vessel and the necessary permits to embark their goods, the Americans recurred, perhaps, to these cases, and began to dread some serious restraint. They were relieved, however, from any such apprehensions as those by the presence of Captain Page, in the United States steamer *Water Witch*, and on board that vessel they were at last safely embarked.

The narrative we have given is drawn wholly from the evidence. It contains nothing but what we believe to be true, and many details, similar to those mentioned, might safely be added to it. Of this character, for example, is the degradation imposed upon the witness, Morales, who was compelled, he says, at peril of his life, to carry the sign of the company from the cigar factory to the office of police, followed all the way by a Paraguayan soldier. We have stated enough, however, to show the aggravated wrong of which we complain, beyond, it appears to us, the shadow of a doubt. It is easy for Paraguay to blame Hopkins. It is easy for President Lopez to make denials. It may not be impossible, here and there, to find slight discrepancy of evidence, or a single inaccuracy of date, though we confess we do not know where they are. But the great facts after all remain, and no human ingenuity can possibly explain them away. No wonder that Captain Page, in view of them, urged upon his government the most strenuous measures. No wonder that Mr. Hopkins and his associates were indignant at their wrongs. No wonder that the company appealed promptly to the Executive and Congress of their country. No wonder, either, that the appeal was answered, and the use of force authorized. There is enough in the plain history of the case to account for and justify all these appeals and all this earnest action. If ever a government committed an aggravated outrage upon American citizens, such an outrage was committed by the government of Paraguay upon this company.

By the series of events which we have narrated, the company had been broken up, and had been driven away. No one believes that it could have sought this fate. It had gone too far, and risked too much to retire voluntarily from a field which it had found more promising even than it first expected. It had yielded only to a hard necessity. A similar necessity broke up soon after the French colony in "the Chaco," which had come out and established itself under the guaranty of a solemn contract. "Such was the treatment of these foreigners by President Lopez, [writes Captain Page in his volume, page 284,] that before the expiration of one year they broke up, and many of them escaped, not by the river, for the vigilance of its chain of guardians is not easily eluded, but through the Chaco, preferring to run the gauntlet of Indians, Jaguars, and starvation, to living under such oppression."

But it is enough for us to refer to the testimony in our own case. The difficulties which Paraguay has had with other powers, its alleged disregard of treaties and contracts in other cases, and the manner in which it attempted to justify its attack upon the Water Witch, by a fabricated map of the river, we do not care

to dwell upon. We only press upon those honorable commissioners the aggravated character of the wrongs done to this company; and, in consideration of these wrongs, we appeal to them for redress.

We come now to the real question in the case. We come to the question of damages. The aggravated wrong being established, the wrong-doer is of course bound to make indemnity, and this honorable commission is to determine the amount. Upon what principles shall this determination be made?

In the first place, it can hardly be denied that the company is entitled to compensation for the actual and *bona fide* expenditures, which have been made fruitless from the wrongful acts of Paraguay. On this point we are justified in remarking that the exhibits of the company have been singularly full and frank and explicit. Its books, and its vouchers, and its cashiers, and its agents have all been produced before the commissioners, and submitted to the most careful examination. Whatever else may be determined, there can be no doubt at all as to the amount and objects of the company's expenditure. Nothing has been kept back, and nothing has been exaggerated or distorted. This amount it belongs to the government of Paraguay to make good. It is the actual cost of establishing ourselves in that country. What the property left there may have been worth, or what the property we purchased there was worth in other hands, furnishes no safe criterion whatever for the estimate of damages. Every necessary step which we took to carry the expedition into effect is just as much a part of its cost as the purchase money we paid for land in San Antonio, or for the cigar factory in Asuncion. It was impossible to go without vessels; it was impossible to go without agents; it was impossible to go without machinery. The vessels were purchased and repaired, the laborers were hired, and the machinery was sent out. The necessary expenses incurred for these purposes go directly to swell the cost of the expedition, and when President Lopez broke up the company and compelled it to retire, in respect to cost, he must be held as having taken its place. Having seized the position, he must pay what the position cost. Having taken our property and broken up our business, he has no right now to plead in extenuation the cheap land or the cheap buildings in a country under his own control. The books and papers and witnesses show that what we paid for our purchases in Paraguay was a very inconsiderable part of our aggregate expenditure. We were not natives of Paraguay, but had to go there, and had to take there all the materials necessary to the development of our plans.

The expenses in going and returning on an errand unjustifiably made fruitless by another, even in the absence of any actual

wrong, have frequently been held allowable by the courts. Thus, where an agreement had been made to let certain premises as a tavern stand, and the plaintiff had removed his family to take possession, which was refused, it was held that the plaintiff was entitled to recover, not only the value of his lease, but also his expenses in removing his family and furniture. (Sedgewick on the Measure of Damages, page 86; *Dreggs vs. Dwight*, 17 Wend., 71.) So, where there was a breach of an agreement to let the plaintiff have the use of certain mills for six months, for £10, it appeared that the mills were worth only £20 per annum, and yet damages were given to £500, by reason of the stock laid in by the plaintiff; and, "*per curiam*, the jury may well find such damages, for they are not only bound to give the £10, but also all the special damages."

Even in cases of breach of contract, there is a manifest tendency towards a greater liberality of compensation. Whenever there are reliable *data*, the courts seem willing now to make the party injured entirely whole, even to the extent of damages somewhat remote.

Where the case, however, is a case of *tort*, and the wrong-doer is the defendant, the rule has been held to extend even to consequential damages. "He who has caused a damage maliciously and purposely," says Puffendorf, "is answerable for all events, however unforeseen or extraordinary they may be. He has himself, in a voluntary manner, become liable to all the consequences of his own wicked act and intention, and therefore merits no indulgence." (Law of Nations, book 3, chapter 1, page 213—note.) So, in the 6th Bingham, 716, Tindal, C. J., says: "No wrong-doer can be allowed to apportion or qualify his own wrong; as a loss has actually happened while his wrongful act was in operation and force, and which is attributable to his wrongful act, he cannot set up as an answer to the action the bare possibility of a loss if his wrongful act had never been done." See also the "*Amiable Nancy*," 3 Wheaton, 546 and 558, where it was held that, "had the action been against the original wrong-doer, exemplary damages might have been allowed. The rule is, however, says Sedgewick, page 112, that even in cases where vindictive damages cannot be demanded, the law will go further in quest of consequence, to punish a wrong-doer than to redress an act of pardonable negligence."

"I do not think," says an eminent English judge, in a recent case, "that the jury is bound to weigh in golden scales how much injury a party has sustained by a trespass."

But the actual and necessary expenditures of the company in the establishment of their business have nothing to do with consequential damages. They are in the nature of direct

and certain damages. They are expenditures which have been made fruitless by the wrong of Paraguay. There is nothing conjectural about them. The data for their computation are clear and distinct, and the proof of their payment is beyond a doubt. The "United States and Paraguay Navigation Company" had actually paid out and expended in the prosecution of their enterprise, prior to its destruction by Paraguay, and have since expended, in legitimately winding up its business, and prosecuting its claim for indemnity, the sum of \$402,597 37. Embraced in this amount are its losses on two vessels, neither of which had reached its place of destination. One of them was condemned and sold at Maranham, and the other, only reaching Buenos Ayres after the company was broken up, was driven to a deviation from her voyage, and was wrecked in Tigre river. There is no question, however, that both the ships were selected with care and judgment, and that the disasters which befel them are beyond the reach of ordinary prudence on the part of the company to avoid.

The history of the "El Paraguay" is stated in detail, and with great frankness by Captain Potter. She was a staunch, strong vessel, thoroughly repaired, and fitted out at great expense, and was only rendered unseaworthy by a succession of storms which it seldom falls to the lot of any vessel to encounter during one voyage. She forms a just part, then, of the expenses of the expedition. Her loss was one of the incidents of the business; and every enterprise must encounter risks and suffer losses as well as make profits, and the profits are relied upon to make compensation for the losses. The company understood all this perfectly, and it only took the hazard from its confidence in the final results of its enterprise, and its expectation of deriving from it, at last, the most satisfactory returns. This expectation bid fair to be fully realized, when President Lopez, by driving out the company, made Paraguay liable for all the legitimate losses of the company. Had the company been left to itself, the losses would have speedily been swallowed up in the gains.

The same may be said of the selection and outfit of the Blodgett that has been said of the selection and outfit of the "El Paraguay." But the "Blodgett" arrived safely at Buenos Ayres, and but for the deviation from her voyage, which the acts of Paraguay occasioned, she would doubtless have arrived safely at Asuncion. Her loss was occasioned by this deviation, and the law is well settled that, in such a case, the loss must fall upon the party by whom the deviation is rendered necessary.

To where the defendant undertook to carry a quantity of lime in his barge, from Medway to London, and in going to London

deviated from the usual course, and during the deviation a tempest wet the lime, whereby it set fire to the barge, and the whole was destroyed, it was held that the cause of the plaintiff's loss, viz : the deviation, was sufficiently proximate to entitle the plaintiff to recover. (*Davis vs. Garrett*, 7 Bingham, Rep. 716.) See also 22 Penn., 54, *Pittsburgh vs. Grier*. Opinion of Black, C. J.

But the loss in both these instances, the Paraguay and the Blodgett, having occurred through no negligence of the company, may well be charged, independent even of the rule of loss, as a part of the general cost of the company's position in Paraguay.

As other *items*, also, in this same account of expenditures, are embraced charges for counsel fees and expenses of prosecution. Under the civil law these were always allowed; and Story J., in *Pierson vs. Eagle Screw Company*, 6 Story, 402, seems to have settled the principle in the common law. "If the plaintiff," he says, "has established the validity of his patent, and that the defendants have violated it, he is entitled to such reasonable damages as shall vindicate his right, and reimburse him for all such necessary expenditures as have been necessarily incurred by him, beyond what the taxable costs will repay, in order to re-establish that right."

Judge Woodbury afterward concurred in this opinion. *Allen vs. Blunt*, 2 Woodbury and M., 121.

The same rule was adopted by the American commissioners in Leggett's case, and was sustained by Baron Roenne, the arbitrator. The inquest allowed in that case for time and expenses in prosecuting the claim.

In Leggett's case, also, interest was allowed at the legal rate in Mexico. We have charged interest in our exhibit according to the rates and practice in Rhode Island, and only what would make us whole, if it should be allowed.

But the position in Paraguay, which had been achieved after great expenditure and so many disasters, was worth far more to the company than it cost. Without claiming consequential damages in any form whatever, we respectfully maintain that, in estimating the value of the company's position in Paraguay, and the indemnity, consequently, which President Lopez should pay them for having taken it away from them, reasonable reference must be had to the profits which were likely to be derived from it. In many cases this ability to make money, or, in other words, expected profits, constitutes the whole value of a property. Take a newspaper, for example, where everything is dependent upon the "good will." We have known \$30,000 to be given for a newspaper establishment which did not even own the press and types upon which it was printed. Yet the establishment was worth the price paid for it, because it yielded a large interest on that sum.

The rule of considering profits as an element of value is sustained by the most respectable authorities. In *Ingram vs. Lawson*, 6 Bingham, N. C., 212, the plaintiff was allowed to prove the average profits to the captain on an East India voyage, and the jury were instructed that, with a view to estimate the damage, they might look to the nature of his business and his general rate of profit; and, on a motion for a new trial, this was held right. "With respect to the damages," Coltman, J., said, "the jury must have some mode of estimating them, and they would not be in a condition to do so unless they knew something of the plaintiff's business and the general return from his voyages."

So, in Alabama, *Donnell vs. Jones*, 17 Ala., 689, the court say: "We would by no means say that the jury should make the supposed profits which the plaintiff had lost the *measure of damages*. All we design to affirm is, that proof tending to establish such loss, as a consequence of the suit, (malicious prosecution,) may properly go before the jury, to serve as some guide for them in the exercise of their discretion in estimating the loss."

And Mr. Sedgewick says (page 93) that, in cases of tort, this evidence appears to be often necessary. In *McNiel vs. Reed*, also, 9 Bingham, 68, which was an action for breach of an agreement to go into partnership, the plaintiff was allowed to show the value of an East India voyage which he had given up, "not as special damage, but as an ingredient for estimating the value which each of the parties set on the contract in dispute."

In a commission of this kind, under a treaty which requires only impartiality and justice at the hands of the commissioners, no reasonable ingredient of damage will be refused consideration. Mere technicalities will be always sacrificed to substantial justice; and where the courts admit the estimate of profits at common law, to assist the judgment of a jury, a liberal application of the same rule will doubtless be made by an international commission, which has a large discretion and sits to do equity.

In Leggett's case, the American commissioners, watchful of the most extreme rights of their own citizens, decreed the allowance to the claimant of "expected profits" as direct damages, and the argument of Governor Marcy in justification of this rule, *as against a wrong-doer*, is extremely able, and supported by the most respectable authorities. But the consideration of probable profits as an element of present value, is allowed in cases of tort by the best of the modern decisions, and by the leading text-book also, (Mr. Sedgwick's,) on the subject of damages. It is a legitimate element, therefore, in cases of this description, and is peculiarly appropriate in this case.

When the company embarked in their enterprise, it was, of course, with a view to expected profits that they did so, and it was with a view also to extraordinary profits. They understood very well the risks they encountered. They knew how much capital they would have to invest. They knew that some of their ships might be disabled, and some of their agents might fall victims to the climate. They knew that the contemplated seat of their operations was far off, and in a region where governments were not always stable and revolutions not impossible. They understood all these *risks*, and they took them in consideration of what they believed they would ultimately accomplish. They were intelligent men. They had made themselves acquainted with the productions and resources of the valley of the La Plata, and with the position, in reference to them, of Paraguay. The government of Paraguay had held out inducements to them to go there, and they relied upon those inducements. They relied also upon having "fair play" there, and that legitimate protection which a law-abiding resident has everywhere a right to expect. They relied, moreover, and more than all, upon the name and character of American citizens, and upon the disposition and ability of the government to protect its people, wherever they are, in the exercise and maintenance of their just rights. Under what circumstances this protection might become necessary it was impossible to foresee. They had reason to anticipate the good will of President Lopez; but, if he should become hostile and aggressive, they believed that he could not be allowed to justify his aggressions by alleging the arbitrary character of his government, and his consequent right to do as he pleased with foreigners, as well as with subjects. If he invited property there, he could not confiscate property. If he admitted citizens from abroad to trade there, under assurances of safety, he could not, by *ex post facto* decrees, break down their trade, and then drive them from the country. What might be the rule, under governments of fixed law, is not always the rule under governments of force.

"The United States believe it to be their duty, (says General Cass to the American minister in Nicaragua, under date of July 25, 1858,) and they mean to execute it, to watch over the persons and property of their citizens visiting foreign countries, and to intervene for their protection when such action is justified by existing circumstances as well as by the law of nations. Wherever their citizens may go through the habitable globe, when they encounter injustice, they may appeal to the government of their country, and the appeal will be examined into with a view to such action in their behalf as it may be proper to take. It is impossible to define in advance and with precision these cases in which

the national power may be exerted for their relief, or to what extent relief shall be afforded. Circumstances as they arise must prescribe the rule of action. In countries where well defined and established laws are in operation, and where the operation is committed to able and independent judges, cases will rarely occur where much intervention will be necessary. But these elements of confidence and security are not everywhere found, and where that is unfortunately the case, the United States are called upon to be more vigilant in watching over their citizens, and to interfere efficiently for their protection, when they are subjected to tortuous proceedings by the direct action of the government, or by the indisposition or inability to discharge its duties." Relying, we say, upon this ultimate protection, in case of necessity, but having good reason to believe that the necessity could not arise, the company embarked in its really great and important enterprise.

Its success in Paraguay was beyond its expectation. Its only thought was, then, to enlarge its business, and send out new materials and additional men. Its profits, on the works it had had time to put in operation, were really enormous. Fortunately, the *data* and proof on this subject are quite sufficient, and beyond successful contradiction. These furnish the best possible basis for estimating the probable profits of the company.

Before considering these in detail, however, we desire to call the attention of the commissioners to the peculiar position of Paraguay in that region of country. Bordering upon Brazil, Bolivia, and the Argentine republic, situated upon a navigable river, whose branches, in different directions, extend thousands of miles into the interior, and whose waters flow with increasing volume to the ocean, no better position could be selected for a company like that which is the claimant in this case. "The country of Paraguay," reports Captain Page, "presents a field for enterprise of which other portions of the world are profoundly ignorant." But if the view is extended so as to embrace the whole valley of the La Plata, with its numerous rivers, its wealth of fertile land, its herds of cattle, its woods and gums, and all the other products which go to give life to commerce; and, when it is considered what would be the effect upon this vast region of steam navigation, and the application of modern machinery and improvements, it is difficult to avoid the conclusion, that this company were not mistaken as to the grandeur of the undertaking upon which they entered. We do not dwell at length upon this consideration, because it is fully represented in the papers already before the commission, and particularly in the report to the Navy Department of Captain Page, where many interesting details are given of the products, as well as of

the exports and imports of that country. In consideration of these facts and statements, the commissioners, we think, can hardly avoid the conclusion, that the company chose its place of operations with great judgment and sagacity. Had it been enabled to go on in its pursuits with the favor instead of the hostility of President Lopez, we confidently believe that it would have secured not only great wealth for itself, but great benefits, also, to American commerce.

If it were possible to entertain a doubt on this point, there can be no doubt surely as to what was actually accomplished. The cigar mill and the saw mill of the company had commenced their work. We have distinct and reliable testimony in respect to their profits, the details of which appear in the evidence. We were also entitled by the organic law of the country to patents upon a great variety of exceedingly valuable machinery.

If these patents were not perfected, the reason is quite obvious. There was no doubt of the priority of introduction of the machinery entitled to protection, and the law made no limit of time in respect to the application.

While on good terms with Lopez, moreover, the company's agent, constantly occupied in business, thought it unnecessary to press those parts of it which would not suffer by delay. Had the company voluntarily retired, it would have been sure to secure the patents; but to have applied for them after President Lopez became hostile, we need not say would have been wholly fruitless. We have still a right, however, to apply for them, and abundant proof with which to support the application. We were really the first introducers of most important machinery, and opened the way to much successful commerce. Others may reap, and are reaping, where we have sown, but nothing can take from us the credit of having been the pioneers of that commerce, and nothing surely *ought* to deprive us of a just indemnity for the destruction of our enterprise.

If, then, the commissioners, setting aside even everything conjectural and uncertain, will only consider what we have put in the case of actual results—of profits made and going on to be made by our cigar factory and our saw-mill; of clear facts and figures beyond dispute—we think they cannot fail to estimate the position of the company at Paraguay as one of great and growing value. And if to what is thus made certain shall be added what is probable, the estimate of the company will not be found extravagant.

We now leave the claim of the company to the judgment of the commissioners. It is no speculative claim; for we show the company's actual expenditures. It is made, too, we may be allowed to add, by no speculative parties. The men who were

stockholders in the beginning are stockholders now. For intelligence and respectability they have no superiors anywhere. Just in proportion as they are disposed to repel an injury to themselves, would they scorn to do wrong to others. They are not here to make a claim which they do not believe to be just. They believe they have been wronged, and it is in consequence of this belief that they seek indemnity. Thus far they have the consolation of knowing that their case has been sustained wherever it has been examined. In this all departments of the Government have concurred. In this all the officers of the *Water-Witch* have concurred. There were no other Americans in Paraguay. We have given the best evidence of which the case is capable. As far as possible we have had our witnesses before the commission, and all our books and papers have been presented without reservation.

All this is not to be overcome by the denial of the wrong-doer himself, or by the affidavits of persons under his control. This denial was just as strong and pointed, and those affidavits were just as ready, before the armed expedition went out as they now are. The files of the "*Seminario*" show that during the whole discussion in Congress, and the whole progress of the expedition, everything was either denied or perverted which imputed wrong to Paraguay, in respect to either the treaty, the *Water-Witch*, or the company. If the "*Seminario*" was right, the armed expedition was wrong. If President Lopez was guiltless of any outrage, it was monstrous to send against him a hostile fleet. If he was thus innocent, moreover, the cost and labor and risks of that expedition were wholly needless. This Government does not make war except after investigation, and in a clear case. Such a case it had, undoubtedly, against Paraguay. The judgment of the Executive on the subject was right, the judgment and action of Congress were right, and we do not doubt that the action of these commissioners will be right. One of them, from the necessity of the case, is the immediate representative of the Government complained of. But, occupying here an impartial position, we none the less look to him for that justice which we feel we have a right to claim. The same impartial position belongs to the American commissioner, and we appeal to him also, and with entire confidence, to protect his countrymen in their rights. The enterprise of this company was precisely such an enterprise as the Government of the United States has an interest in promoting. When men do business in the old channels, their risks are comparatively small, and it requires little comparative forecast and courage to embark their fortunes. But when a new way is to be opened, a new channel to be explored, and men are willing to send out their ventures to a distant field of commerce, where they expect to

develop new resources, and win both honor and wealth for themselves and their country, no government should be allowed to crush them by the strong hand of power. If this could be done with impunity, there would be an end to all distant and hazardous expeditions, except those undertaken by lawless men for lawless purposes. Happily, in this case the Government of the United States has promptly interfered in behalf of its citizens. The armed expedition of Commodore Shubrick has exerted a powerful and wholesome influence, not only on the La Plata and the Parana, but in all South America. We have no doubt that this influence will be strengthened, rather than impaired, by the judgment of the commissioners in this case. To repress the practice of wrong, there is nothing more efficient than certain justice to the wrong-doer. And in this result all men have a common interest. As no man can know when he himself may be injured, so no man can safely tolerate the doing of an injury to others. When Solon was asked how there might be fewer injuries committed in the world, his reply was, "If they who are not injured would be as much concerned as they who are." In behalf, then, of the company which we represent, we ask that its claim to be indemnified for an admitted wrong may have all that consideration and sympathy to which we believe it is fairly entitled.

SUMMARY OF THE FACTS AND EVIDENCE,

AND

REPLY TO SOME OBJECTIONS.

INDUCEMENTS TO THE ENTERPRISE.

The undisputed facts are—

1st. That Paraguay invited expeditions like that of the company to that country.

The decree of the government of Paraguay, issued on May 20, 1845, invited foreigners to develop the resources of that country, and for that purpose proffered them the patent privileges (or compensation instead) for foreign discoveries introduced by them into Paraguay. Its terms, as furnished in an English translation by counsel for the government of Paraguay, are—

“The Supreme Government, wishing to develop and encourage the industry and improvement of the republic, and considering that one of the modes best calculated for this object is to define, explain, and secure the conditions and rights of those who may come to co-operate in such useful purposes, decrees as follows :

ART. 3. Any person who may introduce into the country a foreign discovery, will enjoy the same advantages as though he were the inventor.

ART. 5. The inventor will receive a patent which will secure to him the ownership for the period of from five to ten years from the day of its date. The above time may be extended, and other advantages allowed, if the importance of the invention is of such a nature as to deserve an extraordinary protection on the part of the government.

ART. 7. The owner of a patent shall enjoy the exclusive privilege of the same, and of the fruits of his discovery, invention, or improvement, for which it was given him.

ART. 9. Every owner of a patent will enjoy the right of opening establishments or stores in various parts of the republic, subject to such restrictions as may be previously communicated to him. He may also authorize others to apply and use his means, invention, or secret, and dispose generally of his patent as he would of movable property.

ART. 13. When the objects or articles of discovery, besides being of public utility, are of simple construction and easy of

imitation, instead of an exclusive privilege of a patent, the inventor may ask for a compensation which may repay him."

Senor Gelly, then Minister from Paraguay to Brazil, sent a letter, Dec., 1848, to Mr. Hopkins, (original produced and acknowledged by Senor Berges, Paraguayan Commissioner, to be the handwriting of Gelly,) saying:

"In the said decree President Lopez has resolved all questions which could arise in regard to privileges and premiums. If you introduce into the country machines or new means of industry which the country does not possess, this decree gives you the monopoly for ten years at least, and you do not require a special concession. 'You have visited the country twice: the first time as an especial agent of the Government of the United States, the second time as an explorer. You have enjoyed the sympathy and the estimation of the generality of the inhabitants of the whole country. You know personally the most distinguished members of all classes. You have been able to observe and judge all persons, and the advantages which the different productions of the country offer. Nothing is lacking to you, therefore, to direct with certainty and good success any kind of enterprise and speculation in Paraguay. In this country living is easy, commodious, and cheap; the population is numerous, moral, submissive, and industrious; the hands cost but little, and the means of communication are facile. Paraguay will attract many speculators and working men as soon as the country shall be better known.'

Mr. Hopkins, the agent of the company in Paraguay, had resided and traded in that country nearly eight years prior to the company's arrival, and was always on the most friendly terms with President Lopez during that time.

EXPENDITURES.

2d. The company, induced by these decrees and facts, and by their knowledge of the resources of Central South America, watered by the confluents of "La Plata," which were thoroughly understood by its President, Governor Arnold, (see his deposition,) from extensive travel in those regions, sent two expeditions to that country, and have expended, and become liable for a sum which, with interest, now exceeds four hundred thousand dollars. The amounts and modes of this expenditure have been shown at great length. The original books of the company and its vouchers have been produced, and its officers and agents have sworn to the truth of the accounts presented.

We quote from record, page 185:

"With reference to the evidences of accounts adduced and exhibited by the company, Mr. Carlisle repeats and consents to

have inscribed upon this record his oral waiver, made in the thirteenth session, 12th July, on the part of the government of Paraguay, of all doubts as to the authenticity of the said accounts. The counsel for Paraguay also admits in the argument read by him the wisdom of the company's management at home, and says if its President, Governor Arnold, had been in the conduct of its affairs in South America, the results would have been satisfactory to all parties concerned."

Thus far, then, his honor, Senor Berges, the Commissioner from Paraguay can go with us. He can perceive that American citizens have, in good faith and in good judgment, expended and lost this large sum of money in an enterprise which he will perceive from its character, would have been of great benefit to his country if successful. And that success was wanting to it from causes of which they are innocent. Had there been no fault or misunderstanding in Paraguay on either side, great benefits would have been realized by both parties. It would not be the policy or the generous wisdom of his government, we respectfully submit, to allow such parties to be the losers in their attempts to benefit at once themselves and his native land.

LIABILITY OF PARAGUAY.

3d. We next come to the question of liability. This we have a right to place also among the admitted points of the case. Our government, through all its branches, and in two administrations, had decided this question. Congress placed the war-making power in the hands of President Buchanan to obtain an acknowledgment and satisfaction from Paraguay for the liability. Repeated pacific overtures by negotiation had been rejected by Paraguay. The President was authorized to use force to bring the matter to a conclusion. The Commissioner, Mr. Bowlin, was expressly instructed that as an indispensable preliminary to a peaceful adjustment of the pending controversy was the admission by Paraguay of its liability to the company. A convention was made which the American commissioner understood to contain such admission. He writes that he has complied with his instructions in every respect, except the immaterial one of the place of payment. Our government so understood the convention and treaty when and before it was ratified. The Secretary of State says, under date of _____, in a letter addressed to the company, that there can be no doubt about the admission of liability. The liability was not denied then by Paraguay. It was understood by our commissioner and government that it was admitted by the terms of the convention. It is so admitted, we think, plainly. And yet, on this trial, the liability is, by the counsel for Paraguay in his opening statement and closing argument, and at all times,

in his own words, "utterly denied." It is not to be presumed that this ground is taken, except by the authority of President Lopez. At all events he is bound by it. All we have to say in this connection is, that this denial and this conduct is of a piece with that of which we complain, and which we shall only too abundantly prove from first to last as the cause of all our troubles—the saying and the professing one thing, or at least what we understood, and had a clear right to understand as meaning one thing, and then, when the time of performance comes, after we have acted upon his assurances, saying and doing exactly the reverse. It is unpleasant to be obliged before this honorable Commission, constituted as it is especially on the part of Paraguay to say such things. But it is the ground and body of our case; what we must term the breach of good faith on the part of Paraguay throughout in its dealings with us, and of which this denial at the start in this trial is a striking proof and confirmation. We shall rest on the assumption in this connection, that our government, which has taken the matter entirely into its own hands in making the treaty and convention, and in appointing this Commission, and has acted wisely and justly, is right in its construction of that which is now brought in question.

Now, upon these facts—first, of invitations by the government of Paraguay; second, of expenditure by the company upon the faith of that invitation; and third, of wrongful expulsion of the company, at the very inception of its success, by the government, from Paraguay—the rules of all jurisprudence entitle us to claim of that government to be made whole for that expenditure. The wrong-doer cannot call upon the tribunals to conjecture what calamity might have befallen the company if his wrong had not intervened and destroyed them.

The loss is not merely an establishment at San Antonio or Asuncion, but all that it cost to place our employees and implements in Paraguay, and all that it cost to gather up the wrecks of the expedition, and bring our agents back.

But beyond this pecuniary expenditure, the time, anxiety, and labor incurred, which are not represented by the account, the motives of the conduct of President Lopez, the nature of that conduct, including every form of insult and violence, and the value of our position in Paraguay, as the pioneer of its commercial, manufacturing, and agricultural development, and as entitled under public laws to patent privileges of long duration and great value, would give us a large additional sum.

REMARKS UPON POSITION OF THE EVIDENCE.

Upon this branch of the case, before collating the items of testimony, we will remark, first, that our claims, and much of our testi-

mony, had been brought home fully to the knowledge of the Paraguayan government, if not otherwise, at least by our statement and affidavit submitted to the Committee of Foreign Affairs in Congress, and appended to their printed report. This document was the subject of criticism in the *Semanario*, as early, at least, as May and June, 1859. Indeed, Paraguay does not complain here that she has not had ample opportunity to meet the case. President Lopez, in the language of counsel in his opening statement in this case, was "bred to the law;" "the productions of his own pen, which the undersigned has had the advantage of seeing, show him to be an accomplished scholar and a man of enlightened and vigorous intellect." He is therefore competent to prepare his case; and those points which are not met in his evidence, must be so left because they are incapable of defence in a judicial investigation. Now, most of our propositions with regard to the motives of Lopez, the insults and violence inflicted upon us, the novelty of the machinery and implements introduced by us, and the value of our rights and position in that country, are proved by the concurrent testimony of each one of the naval officers of the United States exploring expedition, now in this country—Lieutenants Powell and Ammon, and Engineer Lamdin—by the testimony of defendant's witness, Fergusson, by that of the six Paraguayan exiles, by the published report of Captain Page, by the intelligent and full account of Mr. C. E. Hopkins, to say nothing of Morales. And to all that testimony upon these points, there is absolutely no attempt at reply or contradiction in evidence on the part of Paraguay, except the official communications of that government to ours at the time. Where these statements of President Lopez and the despatches of Consul Hopkins differ upon questions of facts, we shall be compelled to the unpleasant duty of showing the unreliability of the former. So, also, from the *Seminario*, the official organ of President Lopez, we shall quote some statements, and contrast them with undoubted and proved facts in this cause.

The difficulty which this company have had to encounter in obtaining the judgment of all fair-minded officers of this government, (which difficulty has, in every instance, been at length triumphantly overcome by force of the truth and right of their cause,) has arisen from the natural confidence of our American minds in the truth of official representations. Captain Page believed in the friendly disposition of President Lopez, and put the blame of the controversy upon Hopkins. He subsequently, with more experience of the former, changed his mind. He says experience taught him that he could put no confidence in the statements of Lopez.

From Captain Page's despatch of September 29, 1854:

"These constant annoyances and obstacles, after the assurances given me, have induced me to address myself to the government in writing, having very little confidence in its declarations to me verbally. The personal intercourse which I have always had with the President, was had at his request. It was a convenience to me, my duties here requiring me to communicate with him frequently, because nothing can be done here without his sanction, however unimportant. This kind of communication suits his purposes better, because, in case of a difficulty arising, his public acts may not accord with his private assurances in any particular."

Further, in his despatch of November 5, 1854, he says:

"He also depends much on his false and empty professions and assurances of a desire for the maintenance of the most friendly relations with the United States. I myself believed, at one time, that there was some sincerity in these professions, but I have seen more of his course, and have become better acquainted with the feelings and policy of his government. His hostility towards Americans is a fact beyond doubt, his assurances in his official communications to the government of the United States to the contrary notwithstanding. His policy is to lull the government into the belief (by his official professions) that he desires the maintenance of the most friendly relations. Yet, at the same time, in his official organ, he seeks occasion to hold up to ridicule, to slander, and misrepresent America as a nation. These abusive attacks are well known to emanate from the President himself. The government editor would not dare insert in the paper any article or writing which he did not know was either the production of President Lopez, or had had his revision and sanction for publication. * * * *

"Of low, vulgar abuse, which would disgrace the most contemptible sheet in any country. * * * *

"But such is his apprehension of being held responsible for his course towards the Americans who have been compelled to leave his country, that he will stoop to any falsehood and misrepresentation to make his appear the right cause in this case."

How different his final conclusions from his first impressions, derived from his interviews with Lopez!

Lieutenant Powell, who was left in command of the Water Witch at Asuncion, testifies the same thing in these words:

"Question 10. Did you find that his (Lopez's) assurances and statements could be relied upon as true?

"Answer. In my opinion, they were unreliable when conflicting with his own interests."

Again, page 91 of record: "These promises, as will appear from the correspondence of the commander of the expedition, were also repeated to him upon his return to Asuncion, but were never complied with." See further, question 9, hereafter quoted.

This change came over minds preoccupied against Hopkins, but minds, be it observed, which at no time believed Hopkins capable of untruth. So Secretary Marcy, through the address and violence of Lopez in retaining C. E. Hopkins, bearer of his brother's consular despatches, in Paraguay, until some fortnight after his own had left the country, had answered Lopez's communication before Hopkins' account of the matter had been received. (See Hopkins' deposition, pages 64 and 65.) His letter to us is a vigorous argument against us. His subsequent despatches have all the more weight, for they are again an instance of a mind changing its first impressions. Though we have not evidence to show the changes in the minds of others in the Department and in the committee, we show their judicial and final judgment, to be obtained only by the presentation of conclusive evidence, and containing the severest condemnation of the conduct of Lopez.

In this connection, also, we are compelled to speak of the despatches of Mr. Commissioner Bowlin, for his misapprehensions come from a similar cause. Our case had never been presented to him by us. Of the amounts and modes of our expenditure, of the treatment we had received, and of the value of our position, he had nothing from us. How his ungenerous suspicions of our accounts contrast with the admissions of the counsel of President Lopez! This may be considered a test of his judgment in the matter.

We had no communication with him except by the written papers which are before the Commission, in which we endeavor by calculation to illustrate the value of our patent rights, and suggest a plan of settlement by which these rights might be restored to us in conjunction with Lopez. We also declined to entrust him or any one else with the discretion to take less than half a million of dollars for our claim in compromise. That we, knowing our own case, preferred the certain delays and expenses and the uncertain results of a commission to adjust the amount to any sum less than that should certainly have suggested to our American Commissioner that we had an honest confidence in our claim. The judgment of the Department was, also, that the minimum sum to be paid should be half a million dollars. (See instructions.) Again, we had no agent or friend to accompany the expedition. It might have been well had we been thus represented. Mr. Hopkins was not allowed to go up to Paraguay.

Commissioner Bowlin, therefore, heard nothing of our side of the case. On the other hand, it appears by his despatches that he was at Montevideo, and not on the intelligent, commercial side of the river—Buenos Ayres. He was but nineteen days in Paraguay. He says in his despatch, "I arrived on the 24th ultimo, and I had substantially settled everything on the 1st instant." He was, according to his despatches and letters published, most cordially entertained by Lopez, Urquiza, the Brazilian Minister, and others, and received one of the most magnificent presents ever sent to an American official by a foreign potentate, at the hands of President Urquiza. He went offering peace and kindness, as was right. He should take care lest the rights of persons and property, for the protection of which governments are created and officers appointed, should not be prejudiced by his action. They have not been, for he obeyed his instructions. And, as against his views, we submit those formed in the Department of State after long investigation of the case on both sides, as made out by the despatches and the *Semanario* of López, and the imperfect presentation by American citizens who had no claim to attention then except their unpleasant position as sufferers and their characters as trustworthy men. The eminent ability, I may be permitted to say, the thorough and masterly knowledge of the whole controversy, displayed in these instructions, as well as the source from which they come, far outweigh the unfavorable suggestions of Mr. Bowlin. Again, if Mr. Bowlin is relied upon as a witness against us, we submit he should appear as every other man now in the country whose statements or evidence have been received. Cross-examination would show the sources of his misapprehension, and the supposed state of facts from which his opinions arise. We should find that he, like others, has been at first misled by the erroneous representations received directly or indirectly from the government of Paraguay. What he heard from others during his short stay in Paraguay stands in striking contrast to the statement of Captain Page as to the state of the public mind in those regions, with which the latter had the amplest opportunity to become thoroughly acquainted. And should Commissioner Bowlin read the admission of Mr. Carlisle on the record as to the company's accounts and this denial of his admission of liability in the convention between himself and Lopez, would he not have the best of reasons to believe that he somewhat misplaced his confidence in his short visit to Paraguay?

MOTIVES OF LOPEZ'S CONDUCT.

The motives of the conduct of Lopez and the animus of the wrong-doer are apparent. They were to aggrandize himself and to exclude our enterprise, whose success would enrich others than

himself. This is aparent: 1st. From his position in the country as its despotic ruler, and directly or indirectly seeking to become the monopolist of its business and wealth. That this is his position the testimony of every witness—C. E. Hopkins, Hale, Morales, the American naval officers, Powell, Lamden, Ammon, the eight Paraguayan exiles, the published reports of Commander Page, the official despatches of the Department, the statement of Page and Guillemot, on page 64, Senate Report—conclusively show. That this is his position is left uncontradicted by the testimony for the government of Paraguay.

That such were his motives, is shown not only by the argument from the nature of his relations to the country and its people, but by the judgment formed at the time and place by disinterested and competent men. (See statement of Commander Page and Guillemot, page 64, Senate Report, that such was the general understanding at the time throughout the country of La Plata.) And Lieutenants Powell and Lamden say:

LIEUTENANT POWELL.

Question No. 7. What was the cause of the change of treatment of the company by Lopez and by the people?

Answer. It was owing to a fear on the part of Lopez that his authority and his pecuniary resources would be weakened by a commercial company of the capital which that was supposed to represent operating in the same field with himself. His (Lopez's) conduct was, as I have said before, probably hastened by injudicious conduct on the part of Hopkins, but I do not believe that any independent man, acting as the agent of a company, could have done more than stave off the result, for a certain length of time, or to have saved more than a portion of their interest.

Question No. 8. Do you mean to be understood as giving your opinion that Lopez would have broken up the company even if their agent had been free of fault?

Answer. I do.

Question No. 9. Was there a change in the mind of Captain Page, your commander, and others, in regard to President Lopez, while you were there? If so, what was the change and the causes of it?

Answer. I cannot undertake to say what was the change in the minds of others. In my own case there was a change of opinion as to his (Lopez's) character, from his conduct during that difficulty, and subsequent to it. Previous to that difficulty, I had looked upon him as a man inclined to liberal views, and to the enlargement of the commerce of his country. But his conduct at that time caused me to believe that he only wished to do so to

a very limited extent, and that when he found that free intercourse with foreigners was leading to free thinking among the people, and would conflict with his own interest and that of his family, he determined to check it.

See also cross-examination 3, 4, 5. Lamden says:

Question No. 7. What was the cause of the change of treatment of the company by Lopez or by his people?

Answer. The impression was among the officers, and I shared it, that the President found that the American company were making too much money, and that his object was to get them away and take the business into his own hands.

But the motives of Lopez's conduct are shown most plainly in his acts. Morales, the superintendent of the cigar factory, who, from his experience in Havana and New York, had become qualified and did introduce many new processes and implements in the manufacture of cigars into Paraguay, had testified, as appears by his printed affidavit annexed to the Senate report, "that propositions have been made to me by Nicholas Vasquez, the confidential judge of peace and man of all work of President Lopez, to seduce me from said company, promising me, on the part of the government, all facilities which I might want to carry on the business for myself of the cigar factory, provided I would leave the employ of the said company."

Captain Page (page 64) had also certified that "on the breaking up of the American Company, one of President Lopez's sons immediately went into the cigar business with these same operatives." This charge is repeated in the statement of the company annexed to the report, and the name of the son Benancio is given. This endeavor to induce the employees of the company to leave their service and enter his own is mentioned in the report also.

To the truth of this charge, Morales, produced in person here, testifies quite fully and amply, saying: "In the month of May, 1854, application was made to me by Judge Vasquez, a confidential officer of the President, now Secretary of State, to leave the company, and go into the same business separate from them. He said I should be furnished with all the money I required, and that it would be for my interest to leave the company. He tried often to convince me that it was best for me to leave the company, saying, 'you know the Spanish better, you know the business better, and you can make more money.'" He further testifies that another offer of fifty thousand dollars capital, from a relative of the wife of President Lopez, was made to him, and, like the others, declined.

Now, to all this, so important in its character, so circumstantially charged and brought home to the notice of the government

of Paraguay, and so easy to be denied, if untrue, by Vasquez, by Garro, and by Benancio, so fully proven at this hearing, no evidence is offered in reply. It stands a proven fact, showing the purposes of the government in regard to the cigar business; and it is in conformity with all the testimony as to the motives of Lopez in his whole conduct towards the company.

DECREES.

If there was nothing in the case but the published decrees and the story of their execution, there could not be a more complete instance of wrongful expulsion. And all, it must be remembered, *ex post facto*. "All meetings of foreigners, except for the ostensible object of visiting and innocent diversion, are forbidden by day and by night," and that applied to a company who had some twenty odd men about to arrive in a second expedition to join those of the first, and would naturally increase its numbers, and if necessary employ American labor in place of Paraguayan. They might not meet for purposes of business, though invited to the country by liberal inducements in public laws. "The use of any foreign commercial firm in the republic forbidden, without the express knowledge of the Supreme Government." It has been suggested by counsel that knowledge here imports consent. Be it so; what then? An American could not use the name of his firm, or his own business name, without the consent of the government. Such a decree would be none the less despotic because petty; none the less a wrong to the invited foreigner. He must use and take such a name as government shall permit. The change does not, we think, improve the decree. The Spanish word "*conocimiento*" means, however, "*knowledge*," and has ever been so rendered in all the translations of this decree and correspondence concerning it. Had not Mr. Hopkins obtained at the corners of the streets the knowledge of the decree, he might not have given, within the three days limited for applying for a license, the formal knowledge, which it is admitted he did to the government, of his title and office, and thus have lost his right to a license under the new decree, to which we next refer, if, indeed, that decree could affect his rights: "Every industrial or commercial factory unlicensed will be shut up if the persons interested do not take out a license within three days." This, after many months of open and continued and encouraged business. There is no evidence of any prior law requiring such a license. If there were, it certainly had been waived by the power competent to waive it. But we applied for the license. It was refused, because Mr Hopkins signed the title of which he had given formal notice, and which had been recognized often by the President himself.

An application for other licenses was made signed, Per E. A. Hopkins, M. Morales. These, though customary forms, were refused upon frivolous pretexts. These applications, with the endorsements made upon them at the time of the transaction by Mr. C. E. Hopkins, and sworn to also by M. Morales, are before the Commission. The proceedings under the decrees themselves are the little evasions of a power which dares not do openly what it is determined to effectually. By a robust Saxon mind they are not easily traced or credited even. The more minutely and closely this business is studied, with a true appreciation of the character of the parties engaged in it, the more transparent will the utter breach of good faith appear, and the thin veil of legal form over the illegal act. We should be willing to trust the case to the simple reading of all the decrees in the order of their publication, bearing in mind the proper confidence to be reposed or refused to their recitals of facts. We leave them to judicial examination and to judicial judgment. Only when the last act required physical and open force did Lopez, through his minister, make up his mind to brave what he termed "the gilded guns of the Americans."

INSULTS AND OUTRAGES.

As to the sabre blow of the Paraguayan soldier upon Clement E. Hopkins, and other outrages and insults to Americans: The statement of Mr. Hopkins has been given before the Commission. He has been examined and cross-examined at length. We submit that the Commission will have no doubt of his truth. The Paraguayan government has presented no counter proof. The affidavits taken *exparte* and transmitted to the Department of State, pretend that Mr. Hopkins, then an invalid, riding on horseback in company with a lady, rode violently into a drove of oxen and dispersed them, and then the soldier struck him, and he answered with blows and curses. (See page 9, Falcon's Despatch.) It is incredible in itself. Fergusson confirms Hopkins in saying that after he had stopped his horse, and while conversing with the lady, the soldier from behind struck him, without a word of warning a blow with the flat of his sabre. Whether directly in the herd, or up to them, or on the side, is immaterial. The latter the most probable. Hopkins swears to it. Fergusson indistinctly recollects his flying words in conversation, and has no memory to favor Hopkins, certainly.

The government of Paraguay, in fact, confirms Hopkins, by ordering the soldier punished with three hundred lashes; of the execution of the order however, no evidence was ever given—a fact easily proved, then and now. This was not the beginning of the trouble, but one of the occasions used by the government

to create an outbreak. Mr. Hopkins very properly speaks in his letter to Mr. Falcon calling for satisfaction for this outrage of the series of insults and annoyances to which the Americans had been subjected, and which we have proved in this case. Mr. Falcon pretends ignorance of them. The correspondence will doubtless receive the careful perusal of the Commission, and Mr. Hopkins' treatment of the subject in controversy will be found the most triumphant. What confidence can be placed in official communications from this source when we find this professed ignorance of facts so notorious and so thoroughly proved as the insults and annoyances to Americans in Paraguay? Annoyances in the midst of which long continued it would be impossible to live. The wife of our general cashier had from this cause been compelled to return home, called by gross names in the streets—missiles of every offensive kind thrown into the windows of the office and houses—more abundant than ever when under guard of soldiers. An American knocked down by a stone from behind, another struck with a sword—forbidden by a new decree to carry any defensive weapons—friends and acquaintances requesting for their own safety a discontinuance of social relations—landlords requiring their premises—market people unwilling to sell—servants driven from our employ by the command of the government, and slaves compulsorily taken from us, (see Decree of 29th August, '54, quoted in Hopkins' Despatch, No. 10.) Abuse beneath that of the most contemptible sheet in this country, heaped upon the Americans in the official paper, (see pages quoted before, and the columns of the *Semanario*.) What life is under such circumstances none can know unless they have been similarly placed. This conduct stimulated by the government and caused by it! Now, this is most abundantly proved in the affidavits in Hopkins' dispatch. The dispatch did not reach Secretary Marcy until after he had answered Falcon's dispatch. He could not, until compelled by proof, believe that such things could have occurred in Asuncion and yet Mr. Falcon deny it. After proof of this unreliability and of other things, Mr. Marcy changed his mind. How fully this conduct and the sources of it have been proved, I need not say to the Commission. Too full, too abundant to need citation. No explanation or contradiction in evidence. Counsel may pass lightly over it, but a judge, feeling the responsibility of doing right, will attentively consider it. A manly and positive decree of expulsion by the hands of the police or soldiers is no more a forcible expulsion, than such conduct in such a community and by such a government. The willingness that we should leave, and the withholding of passports in the attempt to extort from us our papers, which might be and have proved to be the most valuable evidences of our rights, and his wrong, are of a piece with the

rest. Then the pretence that they were willingly sent, when obtained by the at last firm position of Com. Page, and finally the essential characteristic of misstating the conduct of that officer, averring a rudeness of conduct impossible on his part, as well as denied by him.

Counsel indulged in some play upon words with the plain seaman, Capt. Potter, as to a forcible expulsion, and yet asking for and taking passports. The victim of tyranny in Naples, we should properly say, was driven from his country though to get out he had to ask for passports. The old decree which forbade the Greek wood, fire, and water was a decree properly described as condemning him to exile or death.* The force which closed the cigar-factory, and the San Antonio, we take to be force, though no blow was struck or weapon used. Mr. Hopkins may use one form of expression, he and Mr. Carlisle may argue, but to a plain and honest judicial mind, the decrees, the treatment of the Americans was an expulsion from the country. We rely upon the full accounts of Capt. Page as to the events under which the Americans left, and their position at that time, with the caution that the statements made to him by Lopez shall be credited to just the extent to which he, Capt. Page, found them worthy of credit.

SAN ANTONIO EXPULSION.

That we were expelled from our establishment at San Antonio by force, by the high officers of the government, and by the direct order of the President; that our machinery and implements were carried away under his orders, and disposed of at auction or otherwise, as he saw fit; that the workmen were commanded to cease working in our employ then, the cook taken away summarily by the orders of the authorities, and that the country people even ceased to furnish provisions, as they had been accustomed to do, is not denied. Fergusson, their witness, reaffirms his affidavit, and in his deposition here given leaves the fact and mode of our expulsion from there beyond a doubt. Boyd and Morales concur in this testimony, and so Lopez's decrees filed by him confirm it.

Now, what is the justification given for this?

We quote from the *Semanario* of Ex. 78, in reply to President Buchanan:

MESSAGE TO CONGRESS.

"Nevertheless, in order to proceed with entire legality in the matter, and to prevent ulterior reclamations, Hopkins was notified to present at the government office any evidences which he might have obtained from the civil notary's office of any purchases

of lands that the government, for just reasons, could not approve; and it ordered Hopkins to be summoned, and had it noted by the civil notary in the original writings.

"We proceed to the proof in justification of this step. Hopkins had deceived Dona Elenturia Bedoya, widow of Don Ramon Zelada, into selling him a piece of land which was exclusively the property of her minor children, who had obtained it by paternal inheritance. He had abused the ignorance of the widow, who was incapable of making this sale without a previous notice of its utility, and without a judicial mandate, as Hopkins had been admonished by the civil notary; but this delegate of justice was also deceived by Hopkins saying, in reply, that he could proceed to purchase the ground, owing to the existence of a verbal order from the President in his favor, which authorized the deed of sale to him without the intervention of the defender general of Minors being requisite.

"Hopkins refused with the greatest contempt to receive back the price of the ground, and consequently this money was appropriated for the benefit of the poor in the prison. Contravening the supreme act of August 23, 1854, he purchased other pieces of land without taking possession. The government could not regard with indifference such disrespect to the law, and the term of six days, which is set down in that regulation, having expired, these lots of land were adjudged to the State, their values being ordered to be charged to the account of Hopkins' debts to the State."

He says that his conduct, to avoid ulterior reclamations, was grounded upon the alleged fact, that the sale of the land to us, which belonged to minors, had not been sanctioned by the judge of probate or defender general of minors; and that the scrivener had been surprised or deceived by Hopkins into making such a deed without such sanction, by representing that the President directed it to be dispensed with. Now this defence set up by President Lopez is shown by the original deed here produced to be an unfounded pretence. (See its translation in Senate report, page 80.) The official guardian of minors did intervene, and moreover joined in the deed. How came this pretence to be set up? The defender general of minors had deceased. Hopkins, in his hurried notes in reply (allowed but a single day) to the many alleged grounds for the decree at the time, had not brought out this fact. We had the deed, Captain Page having sustained us in the right to carry them off, though Lopez at first refused our passports, unless they were surrendered, (see Page's despatches,) and probably did not know their contents. Thus the ground of his action set up in his official organ, in reply to the President, is shown to be utterly untenable. Again, had the

fact been otherwise, by what right should the President interfere? The parties concerned did not complain. They had received 50 per cent. more than the adults for their portion, and (here comes in the ten dollars paid to the widow to make her portion equal to the minors,) besides, no compensation was offered for improvements and expenditures, which amounted to thousands.

It is said also, now, that the land was the site of the government barracks. Very well. It is admitted in the Paraguayan proceedings that the land did not belong to the government. They take it, and pay rent for the past occupation. We bought it and paid for it, without, however, at the time of purchase, supposing that it included the barracks. (See Hopkins' notes, No. 7, his objection to decree.) The barracks had been leased to us for two years, (see C. E. H.'s deposition, and E. A. H.'s despatch, and Ferguson's closing testimony) just as the money was loaned to us for two years. We had a right to occupy them until that time expired, owning the land, and the barracks having been conceded for that period. It is said we put up new fences; of course we had a right to do so on our land. But we did not enclose the barracks, (or any property during our rightful exclusive possession,) only enclosing some of the land which had been open, changing the route for a way across it without complaint from government. But these things are too small to dwell upon as grounds of confiscation. They are not even mentioned by President Lopez, an able and intelligent man, in his *Semanario* reply to the message of President Buchanan. Again, he had a full knowledge of the transaction as it progressed, and assented to it. C. E. Hopkins says:

"Another subject of conversation was the documents for the San Antonio property. Extraordinary delay was practised by the notary public and civil judge in the preparation of these papers, and though the company were in actual possession of the property early in November, it was not until the following March that the documents were signed, sealed, and delivered, and the money paid in full. That the President was aware of all the steps taken in the negotiation must be evident, as the notary and the judge, like all the subordinate officers of the Paraguayan government, are directly responsible to the President, and dare not take any important step, such as the consummation of so important a sale as that of the San Antonio property was considered to be, and which had been five months in progress, without direct orders from their superior. I had occasion, when afterwards acting vice consul, during the absence of Mr. Hopkins, to call the President's attention to the delay in the drawing of the papers by the notary; and he put me off, by saying that there was time enough to arrange all that, and that it was a tedious matter

to arrange and copy all the documents in a case where so many persons were interested. The subject of the licenses for the saw-mill, warehouse, and cigar factory, was also spoken of; and Mr. Hopkins always understood the President to say that he excused him from these formalities as a matter of special favor."—Record, p. 68.

Question No. 7. Did you have a personal conversation with the President about the San Antonio deeds?

Answer. Yes.

Question No. 8. Were the company then in possession of the land?

Answer. Yes.

Question No. 9. Did the President know it?

Answer. Yes.

Question No. 10. What did he say about the deeds?

Answer. He put me off, by saying, generally, that it was a long job, and that there was plenty of time.

And moreover, when the government, on the 7th August, proposed to buy the land of Hopkins, fixing thereon a price, a mere cypher of its then value, he admitted the pre-emption right to purchase the site of public works, but wished time to make a proposition in reply. On the 11th August, Lopez withdrew the offer to buy, and declared his title null and void, and proceeded to eject him, and take the land to himself for the government. (See paper filed by defence, 2 A.)

Without the use of that part of the land including the barracks, the only house for our men and the shelter for our machinery, the establishment must stop. The eviction turned persons and property out of doors. It was suggested in argument that Lopez had the right to revoke the permission to use the barracks. He had no right to annul the title to our land, and eject us for that. Nor, as we understand law and justice, as administered in any court, however strict, still less in one constituted like this, can a party revoke an act, upon the faith of which another has made expenditure, without making him whole. The wholesome doctrine of equitable estoppel, adopted by the common law from courts of equity, preclude such conduct. It was a lease for two years, and not at will. The right claimed to revoke the lease, upon the faith of which we were established at San Antonio, is another illustration of the breach of justice and good faith which is the substance and body of the case.

Upon being served with the decree declaring his purchase of the 2½ cuydaz of land void, and ordering the vendor to return the purchase-money, he replies, according to the record produced by defendant, as follows :

"Mr. Hopkins has the honor to inform Mr. Vasquez that he will send an authorized person at 3 p. m. to receive a copy of the deed mentioned by him. This person will have no authority to receive any money, as Mr. Hopkins has nothing to do with any money paid to Douce or Madam Bedoya, for a part of the San Antonio lands, belonging to the United States and Paraguay Navigation Company, which he purchased for them as their general agent. He refuses positively to sell the said land. May God preserve the honorable judge many years.

("Signed) EDWARD A. HOPKINS.

"ASSUMPTION, 18th August, 1854."

This reply is thus described in the decree which followed it as an impertinent reply; "exhibiting an unparalleled boldness and an unaccountable grossness, when he might have exercised decency and politeness;" and that he would not "hesitate to insult the government in the most impudent manner." This decree the public saw; the letter they did not. Both now appear in the judicial proceedings. The language adds insult to injury, and illustrates upon what slight ground hard words are used in accusing Hopkins.

This charge about obtaining this deed without the intervention of the Guardian of Minors, is on a par with the charge against Hopkins of smuggling. The original permit having been produced and filed in our Department of State, and the testimony of a crowd of witnesses, (see Hopkins, p. 7, Dep.,) the charge is abandoned.

So the fancy sketch sent to our government of the River at Itapiru. So the grave reasons for refusing to ratify the treaty, the thirty-three important charges, as they are described in the *Semanario*, consisting of changes of the words North America, Union, and similar phrases, to that of our legal title, United States of America.

In fact, no specific charge is made against Hopkins which does not utterly fail. Vague talk and abuse cannot be answered. But we commend the terms of his notes and those of the Government to him to the perusal of the commissioners, if, indeed, they deem it necessary to trouble themselves with this part of the case.

If Mr. Hopkins deserved the language applied to him, if he did act in the matters of the Company in any one respect wrongfully, it certainly could be shown by evidence from Paraguay. There is no attempt to produce any. Powell, with whom he had a controversy, said that his (Hopkins') reputation in the navy was that he was egotistical and presuming. He had for years left the navy. Ferguson, who stands in a peculiar position in this

case, was originally employed to go to Paraguay, by the consul of Paraguay at Buenos Ayres, and by his brother and partner, Decoud, who went to Europe with the son of Lopez, both believed to be partners of Lopez. He says he was not personally insulted in Paraguay; but in the same breath he says, in his affidavit annexed to Hopkins' despatch, 207, that he well knew the notorious fact that all the Americans were insulted and abused. He signs many documents at the time, confirming and concurring in all our complaints, and his private journal expresses the same view of the relative conduct of Hopkins and Lopez. Something has changed his impressions. Perhaps it is nothing more than the fact, which he admits, that he had a violent quarrel with Hopkins at parting, and is now his enemy. Such a man, of all the residents of Paraguay, native and foreign, is the only witness cited to instances of Hopkins' misconduct. Once striking a man with a whip on the highway, again punishing severely a worthless slave who had repeatedly run away. The explanations of the first made by Hopkins are forgotten by this witness. Is not the fact that this important branch of the defence is left to such a witness the best proof that there is nothing in it?

COMPANY TO BE EXPELLED.

Again, it is said that the opposition of the government was a personal one to Hopkins, and not to the company:

1st. This, if true, cannot justify the action of the Paraguayan government.

2d. There is no evidence of it; but the verbal statements of President Lopez to Comm'r Page and Lieut. Powell, both of whom have put on record their experience, that such statements and assurances were utterly unreliable.

3d. He carefully avoided giving us any written statement to that effect on proposing a change of agency.

Lastly, his own decrees here produced by the defendants prove the contrary. They say, No. 2 B, in the decree of 20th Sep., 1854, according to their translation: "It being understood that, by reason of the outrageous proceedings of Hopkins, the company he alludes to cannot go on in this country unless it is under the formal approbation of this government, given with a full knowledge of the company and its rules." This, however, is wrongly translated; the true translation is given in Hopkins' despatch: In the understanding that, with the example of such outrageous proceedings on the part of Mr. Hopkins, the company which he mentions cannot continue in the country unless he shall be entirely excluded from it, and it be placed under the formal recognition of the government, *upon bases which it may think fit to establish*, in order that, hereafter, the outrages and

excess which have given rise to this measure may be prevented. The company could not stay there, except upon such new *ex post facto* terms as Lopez chose to establish. What these would be, can only be imagined from those he had been recently making. The company could not stay but upon new terms. Is not this a destruction of existing rights? To be completely pliant to his mere will and pleasure, so well described by Lieut. Powell, is the condition of their continuance. The contract between Hopkins and the company must be broken at his will; no one was authorized by the company to do it—none to take his place, and he be completely excluded from the company. No breaches of law are committed by him. Are such decrees consistent with our just rights? Hopkins was the head; therefore, the chief object of hostility. But the company must go.

We will now cite some of the evidence from disinterested sources as to the value of our position in Paraguay, the resources of that beautiful and abounding country, and as to the patent rights we had acquired in those resources.

WILLIAM M. POWELL—RECORD, PAGE 113.

Question No. 1. Please state the resources of Paraguay for the development of wealth by an American Commercial and Manufacturing Company?

Answer. I consider the resources of this country, from a cursory examination of it in its present condition, as very great. In an agricultural point of view it has an excellent soil, producing tobacco, sugar, rice, Indian corn, and cotton in an extraordinary degree, and many other articles, such as dye-stuffs, &c., all of which may be found in published articles from reliable persons, to a more or less extent. In regard to machinery, there is scarcely any of it yet in the country, the agricultural implements being of the most primitive kind, and the saw-mill brought there by the company being, at the time that I left the country, the only piece of machinery that was not worked by animal power, that I know of, in the valley of the La Plata. In the northeast section of the country, where sugar was produced to a considerable extent, where the yerba was pulverized by sticks in the hands of laborers, there are running streams of water, of sufficient velocity of current to make it a fine location for applying its power to the different kinds of machinery for which we are in the habit of using it in this country. (See, also, No. 2 Hemp, 3 India Rubber, now so costly. See Hartshorn's testimony, 4 oils, 5 and 6 woods, and 8 Steam Navigation.)

Question No. 7. Were the following articles of machinery known or used in Paraguay prior to their introduction by the United States and Paraguay Navigation Company? (A list,

marked 37 in the company's communication to Commissioner Bowlin, reciting various articles shipped, was here shown to witness, who examined the same, and made the following answer:)

Answer. To the best of my knowledge, none of these instruments were in use, excepting carpenters' tools, blacksmiths' tools, hand-saws, and some varieties of clocks.

Question No. 9. What would have been the opportunity for the Navigation Company to obtain a leading interest in the commerce and manufactures in that valley, and to have acquired wealth, had they been allowed to prosecute their enterprise?

Answer. A responsible company, under judicious management, with the opportunity of free trade in that valley, should have accumulated untold wealth.

DANIEL AMMON—RECORD, PAGE 130.

Question No. 5. What are the resources of Paraguay?

Answer. The national resources are timber; its climate is favorable to all inter-tropical productions. The yerba is among the most valuable of these. The soil is fine.

Question No. 6. Is its climate healthful or otherwise.

Answer. Entirely healthful for an inter-tropical climate. (See No. 7 Hemp, 8 Tobacco, 9 India Rubber, 10 Gums, 11 Woods.)

Question No. 19. How valuable would have been the position of the American Co. in Paraguay, for manufacturing and commerce, if allowed to prosecute its business?

Answer. I can only answer that in a general way, not being a business man. I can only say, that there would have been a great profit in cutting timber, sawing, planing it, and throwing it into market. I do not know the organic law of Paraguay. If uninterrupted or encumbered with moderate duties and rights from the Government in any employment of machinery, they could not have failed to be highly profitable. Commerce, only moderately embarrassed by Government for its own benefit, must be valuable.

WILLIAM J. LAMDIN—RECORD, PAGE 134.

Question No 1. What were the resources of Paraguay for development by an American Manufacturing and Commercial Co., while you were there? State fully and particularly.

Answer. I do not think they could have been better in any country. The woods for building and manufacturing purposes were excellent, and for fuel I have never seen their equal. As an illustration, we had wood on the "Water Witch" for fuel, a cord of which developed as much power upon the engine as a ton of the best Anthracite coal. The soil could produce almost any thing grown in tropical climates; they wanted but machinery

and enterprise to develop the resources of the country. The quality of the tobacco was excellent, the soil well adapted to its growth, and to that of corn also. I saw the India Rubber tree. Hemp I saw also in small portions, the texture of which was very fine. The climate very healthy.

Question No. 2. Were the farming implements and other machinery introduced into Paraguay by the American Co. unknown there, prior to that time?

Answer. Yes, I never saw any prior to the time they were brought there by the Co.

Question No. 3. What would have been the value of the position of the American Co. for farming, manufacturing and trading purposes, if undisturbed by the Government?

Answer. I can't tell what would have been the value; but its opportunities for accumulating wealth would have been very excellent, and Paraguay has the finest rivers in the world for steam navigation.

ALEXANDER FERGUSON—RECORD, PAGE 156.

Question No. 36. What, in general, were the opportunities in Paraguay for an agricultural, manufacturing, and commercial company to acquire wealth?

Answer. Could not say as to the opportunity; but the chance, *if undisturbed by the government*, would have been very good. There were many branches into which the introduction of industry, aided by machinery, must have given profitable results. There was the *caraguata*, or wild hemp of the country, so abundant that we could not get it out of our way. There were gums and woods in great variety, some of them at San Antonio, where I remember a few large copiba trees on the place, which, however, are not good for timber.

Fergusson's testimony will repay perusal, as to the resources of Paraguay and the novelty and value of our machinery and implements.

We quote C. E. Hopkins' affidavit on this subject, filed in the Department, having offered to recall him for cross-examination by defendant's counsel. (See record.)

Clement E. Hopkins, being duly sworn, deposes and says:

That he is the city editor of the New York Daily Express newspaper, and resides in the said city of New York, at No. 20 Varick Place.

That, in the month of March, 1853, he sailed from the port of New York, in the steamer *El Paraguay*, with the first expedition of the United States and Paraguay Navigation Company; that said steamer belonged to said United States and Paraguay Navigation Company, and was the first side-wheel merchant steam vessel that was ever advertised to go to Paraguay.

The El Paraguay was condemned and abandoned on the voyage; but the deponent accompanied the expedition to Paraguay by other vessels.

At Buenos Ayres, in September, 1853, the general agent of the company chartered the American built side-wheel steamer Fanny, of about six hundred and fifty tons burden and nine and a half feet draft of water, and deponent proceeded in her to Asuncion, Paraguay, she being the largest vessel that had ever entered the Paraguay river, and the first merchant side-wheel steamer ever seen within the borders of that country.

She subsequently plied between Buenos Ayres and Asuncion, consigned to the United States and Paraguay Navigation Company, which was the commencement of steam navigation between the two ports. She was succeeded by an American-built propeller, called the Buenos Ayres, sailing under English colors, which vessel continued in the trade long after several Paraguayan and other steamers had been put upon the route.

No attempt at regular steam navigation on the Parana and Paraguay rivers had been made prior to the management of the steamer Fanny, by the United States and Paraguay Navigation Company, which proved the great profit and advantage of the business; but steam communication has been maintained ever since, and a large and valuable carrying trade in steam vessels has grown up.

With the exception of about three weeks, the deponent remained in Paraguay from October 11, 1853, the date of the arrival of the steamer Fanny at Asuncion, on her first voyage, until September 9, 1854, a few weeks before the final expulsion of the company. During his residence in Asuncion and the neighborhood he was cognizant of all the doings of the company, and was personally acquainted with nearly all the details of the company's business.

The Cuban processes of making cigars and preparing tobacco for manufacture were first introduced into Paraguay by the United States and Paraguay Navigation Company. In the employ of the company were two practical cigar makers and a practical director of cigar manufacturing, natives of Cuba, by whom nearly two hundred Paraguayan women were fully instructed in the art of making cigars on the Cuban models. Previous to the introduction of these processes by the company, the tobacco of Paraguay was not subjected to any improvement, and the cigars were of unmarketable appearance and of unequal quality.

The United States and Paraguay Navigation Company imported into Paraguay, on the steamer Fanny, a saw-mill, which was erected at San Antonio, near Asuncion, and worked by

steam power. This was the first saw-mill ever brought into the country.

Previous to its erection, no lumber had ever been sawn in Paraguay by other than handsaws.

The company also introduced and erected an improved horse-power, the first one of the description ever seen in Paraguay.

The company likewise imported into Paraguay on the steamer Fanny a planing machine, which was partially erected when the company were driven from San Antonio; the full apparatus for a brick yard, the machinery of which was also in process of erection; a bark mill, sugar mill, and entire apparatus for an extensive sugar manufactory; a number of grist mills, rice hullers, corn shellers, copper-still machinery—all of which were entirely new, and first introduced into Paraguay by this company. Also a number of improved cotton-gins, the first gins of their description ever seen in Paraguay.

The steam engine of the saw-mill was the first stationary steam engine ever seen in Paraguay.

The United States and Paraguay Navigation Company likewise imported into Paraguay on board of the steamer Fanny a variety of American agricultural implements, plows, harrows, hoes, spades, rakes, axes, carpenters' tools, clocks, lamps, cooking stoves, iron furniture of a variety of kinds, light, American parlor furniture, and a great number of "notions," all of which were entirely new, and just introduced into Paraguay by the company.

The company likewise imported on board the steamer Fanny, and first introduced into Paraguay, a quantity of American tin ware.

The general agent of the United States and Paraguay Navigation Company also imported into Paraguay a large and powerful oil press, to be used in making palm and peanut oils, articles of large demand and production, but which had never been manufactured by means of improved power. This was the first power-press ever seen in Paraguay.

This company also introduced into Paraguay the American mule-cart and harness, previous to which mules had not been employed as beasts of draft in Paraguay.

Also, American ox-yokes, the first yokes ever seen in Paraguay, oxen having been previously tied by their horns to carts. Also an American carriage and an American top buggy, the first vehicles of the kind ever seen in Paraguay.

Also, full sets of harness for carriage horses, no horses having ever been harnessed or driven with reins in Paraguay prior to the introduction of this harness by this company.

All of which articles, machinery, &c., deponent knows of his

own knowledge were first introduced into Paraguay by the United States and Paraguay Navigation Company and their agents.

And further deponent saith not.

(Signed) CLEMENT E. HOPKINS.

Sworn to before me this 26th day of July, 1856.

(Signed) R. E. STILWELL.

We have cited the testimony of all the officers of the American Exploring Expedition now in the country—Powell, Ammon, and Lamdin, of defendant's witness, Ferguson, of C. E. Hopkins, of report of Captain Page—none of whom have any connection with the company—all of whom extol the climate, soil, and agricultural resources of the country, and its opportunities for manufacturing and commercial enterprise. We submit, also, the statement of Governor Arnold upon the subject. And to this view of the matter Paraguay gives no denial or qualification. The value of our position in Paraguay, which holds the key to the wealth of a region surpassing in natural resources the valley of the Mississippi, we leave to the intelligent reflection of the Commission.

PATENT RIGHTS.

We were not only the pioneer company in that region, but we were entitled to patent rights of immense value. The law which conferred them, we have quoted. The fact that we were the first to introduce into Paraguay very much of the agricultural, mechanical implements and machinery peculiarly suited to the development of a new country, we have shown by the testimony of Powell, Ammon, and Lamdin, of Ferguson, of the six Paraguayan witnesses, and of Clement E. Hopkins.

To all this testimony no evidence has been offered in reply or explanation. The undoubted fact of our introduction of these articles into Paraguay is admitted by the most expressive silence. But a technical objection is interposed. It is said, truly, that the law required an application to be made to the government of Paraguay. The terms of the law in this respect are: "Whoever desires to obtain and secure the enjoyment of an industrial property (*propriedad industrial*) of the kind above mentioned, should firstly apply to the Secretary of the Supreme Government, and declare in writing whether the thing he introduces is an invention of his own, an improvement, or only an article he wishes to introduce into the country; secondly, he must deliver, closed and sealed, a true description of the principles, the means, and process which constitutes the invention, as also plans, drawings, models, and everything in relation to the same, in order that the said sealed document may be opened at the moment the inventor receives his title of ownership." Two most conclusive replies

exist to this objection. 1: That we did apply, and the President said, "That is but a form." You have brought the articles here, and can at any time have the papers executed, or, in the language of C. E. Hopkins, in his affidavit, page 30: "Among other things referred to at various times were the subjects of the patent rights to which the company were entitled by the decree of 1845, for all the articles new to Paraguay that had been introduced by them. The President always remarked that there was no necessity for Mr. Hopkins to trouble himself about taking out the papers; that, having introduced the articles, he had a virtual monopoly of them, for there was no one to compete with him in their importation, and as they were all of American manufacture, the company would be the most natural channel for any one in the country to order them through. Having no fear of competition, Mr. Hopkins was not inclined to push everything at once, and reserved the taking out of the papers, which the President remarked was only a form, until the more important branches of the company's business should be put upon a firm basis." These conversations, reported by E. A. Hopkins to his brother at the time they occurred, (that Mr. C. E. Hopkins certifies truly no man will question,) accords with the conduct of President Lopez in his treatment of the company, and in his delay in having the deeds of San Antonio drawn for months after the company had possession there. These last statements E. A. Hopkins heard repeatedly from the President himself, as he testifies in this connection. To this statement of the case there is no contradiction in the testimony for the defence; and certainly Paraguay cannot take advantage of the technicality which it waived.

The second answer is, that at the time of the troubles and of our expulsion we yet had the right to apply for the written letters patent; and compliance with such a request was but a form, which the government could not, under its own decrees, rightfully refuse. The law does not limit the time for the application for letters patent. It should allow a reasonable time therefor; and inasmuch as it requires a full description, plan, drawings, models, and everything in relation to the invention or discovery, it was but right and proper that Mr. Hopkins should be allowed time to set up his machinery, and exhibit it in models or otherwise, before taking out his patents.

Again, the law provides for forfeiture of a patent, in section 4 of article 12: "If, during the period of two years from the date of his patent, he should fail to work the same, except he may justify the cause of his inaction." That two years' "non user" is required to forfeit a patent-right, analogous to the provision giving the same effects to the two years' inaction by

an inventor in our own system of Patent laws. By analogy, two years' delay should seem, therefore, to be the least time which would destroy our right to take out our patents. Before one quarter of that time had expired, the troubles, speedily ending in our expulsion, occurred. We had not then forfeited our right (founded upon the substantive and undisputed fact of being the first to introduce these American implements and machinery) to the exclusive sale and use of them in Paraguay for a term of years, as provided in the decree. These rights were the principal inducements to our enterprise, and the great values they represent are a part of our loss from this wrongful expulsion. A patent is property as much as a lease of a farm, though the value of each depends upon the income to be derived from it for a term of years.

VALUE OF PATENTS.

Now, merely to illustrate the value of some of these improvements, take the steam saw-mill and circular saws: Suppose the one set up at San Antonio was weak. It excited the surprise and delight of the Paraguayans, (Ferguson.) Crowds of its citizens and officials came to see its workings. It secured the right to the use of such powers, as the laying of a mud-sill secures the right to the water-fall. New and excellent machinery for the same purpose was in the mouth of the river. At seven hundred feet a day, the work of this weak and cheap mill and engine, the wages of Ferguson and Boyd were \$100 a month. Fuel cost only the cutting, and was equal for furnishing steam—one cord to a ton of anthracite coal, (Lamdin & Page.) Lumber, by price current, 50 to 62½ cents a vara—3 feet. But these items are not needed to show the value of steam saw-mills and circular saws above common hand labor.

We have seen a suggestion that steam saw-mills were of no value in Paraguay, because Lopez, like the old European Governments, claims a monopoly of the forests. Yet lumber must be cut and used, exported and sold; that he leaves to others. We had shown how cheaply this could be done. Could he have forbidden us the use of our machinery, and obliged us to go elsewhere? What would the effect of such conduct be upon his people? Rightfully, he would have sold to us permits to cut lumber on the same terms he sold to others.

So with the cigar factory. The books and Morales show the full cost to be less than four dollars a thousand—price, in Asuncion, ten; average price of first and imperfect lots, in United States, over twelve. Full value of good ones, twenty-five; thirty-five offered after trial, and demand could not be sup-

plied. The factory had at last got into successful operation, making 27,000 a week. .

Just as soon as these establishments were successful, we were expelled—the cigar factory taken by Benancio. The steam saw-mill, for want of the valves, he could not use. But the value of all our machinery and implements, in such a country, in American hands, an intelligent judge at once and intuitively knows to be vast, almost beyond calculation. As to the operatives, they were all willing to agree to work, and to commence; but soon got tired, and when their abundant wages (see Hopkins' deposition) came into hand, broke off work. We had to appeal to the law of the country, to compel their performance of their contracts—a right allowed everywhere. Practice and our liberal wages were fast making the trouble which, in part, caused our large initial expenses less, (see close of Hopkins' cross-examination;) and if not overcome, or if our agent had proved injudicious, we could and should have changed, and employed other operatives and agents. We had a large number on the route in the second expedition; and the presumption of law is that we should use our advantages in Paraguay wisely. No wrongdoer can, in self-defence, be allowed to suppose otherwise, or be sustained in such supposition by any judicial tribunal.

The value of our vested rights in all these patents for the use and sale of American machinery and implements, includes, of course, the exclusive right of importation and sale of American agricultural and household implements. Capt. Page's book shows us the value of these. Time will not allow us, nor is it necessary in argument, to dwell upon these considerations. But the Commissioners, especially the American Commissioner, who has seen the improvements in our agriculture, can and will, in rendering judgment in this case, allow a just sum for the right to import them for sale into the fertile regions of Paraguay.

RULE OF DAMAGES.

We cite a few authorities upon the rule of Damages. The civil law upon which international law and the law of all civilized countries, (in England and this country, through admiralty and equity,) is founded, recognizes the principles for whose application we ask in this case.

The case put in Domat's Civil Law, 1 vol. 750, Cushing Ed., 1921 et. seq., by way of illustration, is of a person having leased a shop in some town not the place of his usual residence, and then deprived of his possession; the charges for damages in such a case for mere breach of contract, without tort or wrong, are,

1st, for transportation to the place and back again ; 2d, the loss of *profits*, to be adjusted according to the circumstances in a wise discretion—still the profits. He puts the case also of a breach of contract to deliver certain goods for shipment. The expenses of carriage and transport to receive the goods is a clear element of damages. So the profit to be made from them, to be rationally estimated. He speaks of it as a vulgar distinction between the loss of profits and the loss of property.

Thus we see the civil law would reimburse the party all he had expended in attempting to carry out the enterprise, and also for his profits, not wildly but judiciously estimated by the tribunal ; and Domat goes on to say, sec. 1927, that in case the ejection from the leased premises was intended for the gain of the wrong-doer, so that he might make more from other parties, “then the damages ought to have the utmost extent that the rigor of the law can give it.”

So in section 1970. In the case of a builder who does not build the house he contracted for, he is liable for the expense of rebuilding, for the loss of rent in the meantime, and for any liability in damages from the landlord to a tenant with whom the landlord had contracted—as in our case to our employees. Rutherford, in his *Institutes of Natural Law*, being lectures on Grotius, says, p. 203 : “In estimating the damages which any one has sustained where such things as he has a perfect right to are unjustly taken from him or withheld or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing, is likewise the owner of such fruits and profits ; so that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself.”

The rules of the Supreme Court of the United States are the same.

In the cases of *Bell vs. Cunningham*, 3 Peters, 69, where an agent had neglected to purchase tiles in Leghorn, to be shipped to Havana, he was held liable not only for the money which the tiles would have cost in Leghorn, but also for the profit which would have been made on them in Havana.

So the case of *P. W. B. R. Co. vs. Howard*, 13 Howard, 307, when a railroad company had broken its agreement with a contractor, he was allowed to recover for the profits which he would have made if the contract had not been broken. Damages should make him whole of his loss. This case recognizes and sanctions the doctrine of the leading case on the subject in our American law. *Masterton vs. Mayor of Brooklyn*, 7 Hill 62. Where a contractor was allowed to recover in damages the profits he would have made on marble not yet bought or worked—the

difference between what it would have cost him and what he would have received.

The case of the "Amiable Nancy," (3 Wheaton,) the only case referred to by the defendant's counsel, is not a case in which the court lay down the rule of damages against the wrong-doer himself, but against a party who is constructively liable only. We referred to the case, only that this distinction as to the character of parties in the liability for damages might be borne in mind on the trial. This very case, and this only, is cited by defendant's counsel, to show the law in a case against the wrong-doer himself. For such clearly is the case at bar. President Lopez and his Government are confessedly the parties defendant, the parties who have done the wrong. The rule therefore laid down in the "Amiable Nancy" is not applicable to this case, or if it were, has been overruled in the same court.

Now, putting our case down to the mild level of these analogies, regarding the decrees under which we went to Paraguay as offers accepted by us, and then rescinded or practically rendered null and void by the action of the Paraguayan Government, what should be the measure of damages? Certainly our cost in taking our men, machinery and vessels to Paraguay, or cost *bona fide* incurred, though with some disaster and loss in doing so, and in getting back again. So also the value of our position, and especially the value of lease or patents, which, though difficult to estimate with precision, are certainly larger than our claim.

But this is not a mere case of contract broken, but of wrong proved and conceded in the convention, though denied on trial. And in such cases such liability is admitted in all the books, (see Sedgwick and cases referred to in opening argument.)

Rights vested under existing laws cannot be divested under any system of government. This first principle is not open to controversy. It will not do to say in substance that Lopez is a despot, knowing no law but his own will. He does not so profess. He does not ask to be so judged. And Americans in that country he cannot treat in that manner without reclamation and vindication by the government of their country. Nor is his claim upon the justice of this Commission increased if his method shall be found to be indirect and not direct, through popular annoyance instigated by him, through destitution caused by his will, through decrees founded upon alleged but erroneous suppositions of fact through summary and *ex post facto* proceedings, imposing impossible conditions, and, when possible, thwarted by his own action, and especially if the motive of his conduct be tainted with personal purposes.

But we will not dwell upon this conduct; we leave all to the judgment of the Commission. The largest expedition ever sent

from this country has proclaimed our power in the heart of South America. It has proclaimed our justice too. The strength of united England and France is put forth in the eastern world, but our navy seeks the uttermost parts of the earth, also, to open up commerce and a civilization in regions yet comparatively undeveloped. And if wrong is done to American citizens in these new regions of enterprise and commerce, and these wrongs are left unredressed, if they are not made whole for their money expended, for time and labor, and years of life wasted, property destroyed, and reasonable hopes blasted, then the whole paraphernalia of armies and navies is a failure; for they are all, at least in a republican government, the agents and protectors of private rights and of the welfare of the individual citizens of the Republic.

We are assured that the success which has attended the conduct of this difficult and perplexing precedent in our diplomatic history by the present administration will receive its crowning perfection in securing just compensation and redress to American citizens; and that it will never be left for history to record, after the distinct admission of the counsel for President Lopez, made after days of minute and laborious examination of books, papers, vouchers, and witnesses, that he has no doubt of their entire correctness as stated by the claimants—that the sums therefore which they have spent, and for which they are liable, for outlays in this Paraguayan enterprise are, with interest, over four hundred thousand dollars. And after it shall appear, as is equally undoubted, that these moneys were spent in good faith, in good judgment, in the prosecution of that enterprise by innocent parties; and when it appears also that every branch of the American government—and every officer who has heard both sides, and investigated the whole matter, have come to the same conclusion, that the Company was most wrongfully expelled from Paraguay.—that the President, and Congress, and the army, and the navy have been moved by a sense of justice to obtain an acknowledgment of that wrong from Paraguay, and have obtained it—certainly it will not be left to history to say that these enterprising American citizens, endeavoring to open to American commerce and enterprise the great regions of central-South America, now, in consequence of their wrongful expulsion, fallen into the hands of other commercial rivals, were turned off by an American Commissioner, experienced in all the high duties of American statesmanship, with less than their expenditure. Nor will he tamely count as nothing the personal insult and wrong to which they were subjected, or the thought and time and labor which planned and have carried on the enterprise; and which, again, the counsel of President Lopez has said, was itself well done, except in the employment of Hopkins, as to whom the evidence and not

President Lopez or his counsel, should speak. We have employed no underlings to abuse our opponents or their agents or their cause through the public press. We have addressed each tribunal before whom we have appeared, and them only, and with considerations fit to be addressed, so far as we can judge, to the best court in Christendom. The record is right thus far. The past, at least, is secure. The rest is in just hands. An enlightened press, and the history of the country, will record the result; and with it we shall be satisfied.

EXPENSES.

The expenses to which a party is subjected in vindicating his rights are, in the civil law, and in admiralty, and in the practice of commissions which settle international claims, allowed as part of the damages to be received by him.

The statutes in our common law courts allow, on a similar principle, a uniform and fixed rate of costs, which is more or less adequate according to the circumstances of each case, as compensation for expenses.

The costs of this Commission are chargeable as costs of court, like the sums paid to judges and sheriffs and clerks, which the plaintiff always must in the first instance pay, and always receives of the defendant when the latter is cast in the suit. The other expenses, in procuring the attendance of witnesses and for the necessary attendance of parties, comes under the same head, and are allowed in bills of costs. The counsel fees, small in common law bills of costs, and discretionary and just, in proceedings of this character, as well as in the civil law and in admiralty, are allowed in all tribunals.

Domat., 1941: "The ordinance requires a reimbursement of the charges which the parties who gain the said suit have been at in carrying it out."

So in the United States Supreme Court in admiralty.

The Apollon, 9 Wheaton, 98:

"The fifth item, allowing \$500 as counsel fees, is unexceptionable. It is the common course of the admiralty to allow expenses of this nature, either in the shape of damages or as part of the costs."

Many cases in that court follow this rule.

Such is the practice, we are informed, in the Department of State in cases of international claims. Leggett's case illustrates it. Such seems to be the rule in Paraguay. Law of 1845, sec. 7 and 8, as in our patent laws.

Counsel fees, in addition to the bills of costs, are allowed at common law in cases of *tort*, as in cases of flowage of another's lands, (see 2 Story, 661, Whipple *vs.* Cumberland Man-

ufacturing Company;) or, if not in that form specifically, yet under the liberal discretion allowed in all such cases included in the compensatory or exemplary damages by the tribunal assessing them. Sedgwick, 79.

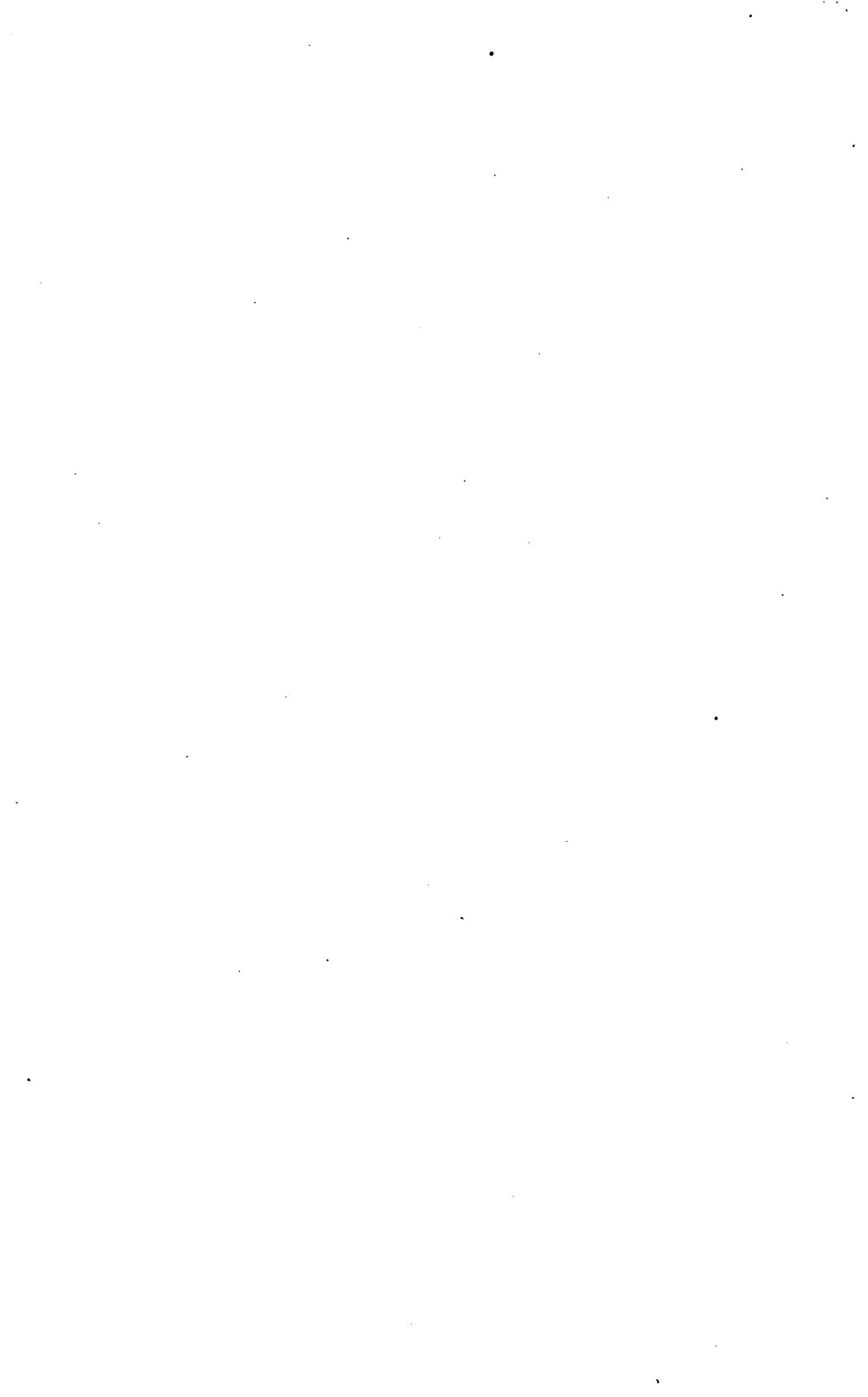
The amount, we may safely say, of counsel fees for three years, with expenses of witnesses and attendance of parties during this six months' trial, will be an addition to the amount already paid and in the accounts, some three thousand dollars, not less than from ten to twelve thousand dollars, which we respectfully claim should be included in the award.

Respectfully submitted by

THE UNITED STATES AND
PARAGUAY NAVIGATION COMPANY.

by their Counsel.

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